

Cabotage Act and the Challenges of Nigerian Shipping Lines in Sub-Sahara Africa

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Abstract

This article is set to investigate the factors militating against the utilization of the Nigerian Cabotage Act 2003 to revamping the ailing shipping industry, which is the fulcrum of the Nigerian major oil and gas sector of the economy. Secondary data, generated through document reading, were used for the analysis. A critical study of both the Act and shipping lines revealed inherent structural defects (poor administration and technology respectively), which are dissonant with the primary aims of developing and protecting local content in shipping industry. The complexities of this resulted to foreign re-infiltration of the Nigerian shipping industry with consequent capital loss. With the existing scenario and the ultimate necessity to overhaul the industry to full benefits of Nigeria and her entire citizenry, there is need to review the Act in order to accommodate the dynamism and interdependence of the modern global market. Also, efforts should be made to create an enabling ground for Nigerians to adequately adjust and take advantage of the Act. These, unarguably, are the way forward to repositioning and guaranteeing a viable, competitive and profitable world class national shipping industry .

INTRODUCTION

Prior to the Cabotage Act, which was enacted to address the prevalent challenges of the Nigerian Shipping lines, the industry was in precarious state of ineffectiveness. Foreign shipping lines dominated shipping business to the tune of over 75 per cent. The Cabotage Act was introduced to stimulate, empower and reposition the indigenous shipping lines for active participation in the Sub-Saharan shipping transactions. Unfortunately however, during the implementation of the Cabotage law, the Nigerian Shipping lines still get stuck in the dilemma – like a vicious cycle that informs the re-examination of the industry in the context of the interventionist Cabotage Act. As the case will always be, such persistent and unusual circumstances seem irresolvable mainly as a result of peculiar nature of the industry in a developing economy, such as, Nigeria.

It is important to note that shipping industry is highly technologically based among others, and Nigeria is still lacking in those areas. It is also noteworthy to state that technology is a critical element for transforming a nation into a leading economy – meaning that, without technology, no meaningful mark will be made in terms of development and self sustenance. Hence, the technologically backward countries will always depend on the technological know-how of the leading economies and such dependence can pose a serious threat to their national security bargaining power in the contemporary international trade and relations as well.

In Sub Sahara Africa, Nigeria is one of the countries whose economy depends largely on her substantial maritime resources. Therefore, the idea of solidifying the sector around local content to engage the ever increasing population in maritime shipping and thus guaranteeing employment and economic sustainability becomes the greatest aim of the government. To that effect, government became worried when Nigeria was rated as one of the poorest countries in the world with a majority of her citizens living below poverty level (World Bank, 2014). This is an unbearable situation considering the amount of natural resources, which efforts have been made so far through maritime reforms (Cabotage Act, 2003) to harness.

However, the coast is still not quite clear for the cabotage ships as the government is still worried about the situation. Issues relating to that invariably demand thorough examination of both the Cabotage Act and the activities of the Nigerian shipping lines though it is really disappointing to do that considering the amount of resources already invested both in the shipping industry and in the formulation and implementation of the Cabotage Act. By this arrangement, the Cabotage Act should be a hinge upon which the Nigeria Shipping lines would evolve into advancement to withstand external competitions, while maximizing employment opportunities and projecting the economy generally.

WHAT IS CABOTAGE?

The word 'cabotage' as Usoro (2003:3) notes originates from Spanish root "Cabo" or "Cab", which simply means short distant coastal sailing or movement (see <http://www.duhaime.org/LegalDictionary/C/Cabotage.aspx>). On the other hand, Ajiye (2013:11) toes the view that the word 'cabotage' is a French word caboter - meaning coastal sailing (cf. <http://www.merriam-webster.com/dictionary/cabotage>). A quick examination of both views shows a nexus in the meaning, which is the focal point of this essay, but differs in origin. Thus, 'cabotage' as a word means activities on the coast and I can quickly add that the difference in origin here accounts for its meaning and application across state boundaries.

Also, the Merriam-Webster dictionary defines 'cabotage' as transportation or trading activities in coastal waters or airspace or between two places in a country (<http://www.merriamwebster.com/dictionary/cabotage>). Extensively, the Wikipedia encyclopedia believes that cabotage traditionally refers to port shipping along coastal lines of the same country "by a vessels or an aircraft registered in another country". The clause "registered in another country" here implies more or less acquiring "Cabotage rights" to participate in foreign land. However, the same Wikipedia further defines Cabotage as a "trade or navigation in coastal waters. Or, the exclusive right of a country to operate the air traffic within its territory" (<http://en.wikipedia.org/wiki/Cabotage>).

The two reference books commonly assess territorial control and management of all coastal as well as aviation activities by individual country as fundamental to cabotage or cabotage Act, which is the legal framework backing 'cabotage'. But additionally, there is evidence of conceptual digression between "Cabotage rights" and "Cabotage Act". Whereas the "Cabotage Act" excludes foreign participation in any host country; "Cabotage rights" grants such participation based on "waiver" relativity (emergency and non availability) subject to the approval of the Minister of Transport granting it in Nigeria context (Ajiye, 2013:15).

It is important, at this juncture, to note that by granting such waiver, "Cabotage Rights" is therefore secured by foreign shippers. The main analysis here is that, "Cabotage Act" protects local content from foreign competitors and as well grant waivers, which qualifies for "Cabotage

Rights". This shows that both are interdependently indispensable for complete cabotage system although with possibility of some difficulties and interferences in application.

From the international law perspective, Cabotage is when there is a trade conducted from port to port by ship in a given country regulated by local law of the said country (Duhaime, 2003). Still, Cabotage is also seen as "a term of maritime law" or movement of vessels for trade purposes along the coastal waters of a nation (<http://definitions.uslegal.com/c/cabotage>). It can go on and on pointing to the direction of the same road. But one good confirmation here is the linkage between 'cabotage' and "maritime law" or Cabotage Act.

Another interesting element embedded in the cabotage Act is that it relates to the Law of the Sea extending state's sovereignty and exclusive rights beyond 200 miles of her territorial coastal borders where activities of cabotage actually take place (Shaw,2003:490-92). Shaw (2003:507) further opines that Cabotage reflects a situation whereby a coastal state may legislate against foreigners from shipping, fishing and trading in her territorial waters to protect local interests.

He also believes that such activities will include "extensive power of control relating to, amongst others, security and customs matters" (ibid). In line with this affirmation, Garner (1999:230) adds that cabotage involves transportation of goods and passengers from one port to another within the same country, and trading along its coast. Here, Garner did not actually emphasize on the exclusionism unlike Shaw. But in all, the views imply total control of all the transport and trading activities by the local authority and this is not far from a policy aimed at developing and protecting local content.

Many countries have keyed into building this local content in shipping industry. The 198 New Zealand Marine Transport Act of 1994 maintains that "no ship shall carry coastal cargo, unless the ship is (a) a New Zealand ship; or (b) a foreign ship on demise charter to a new Zealand-based operator who employs or engages a crew to work on board the ship under an employment agreement or contract for services governed by New Zealand law". Canada also acknowledged Coasting Trade Act as "no foreign ship or non-duty paid ship shall, except under and in accordance with a licence engage in the coasting trade" (<http://www.duhaime.org/legalDictionary/c/Cabotage.aspx>). One striking thing about these countries is that they really share relaxed protectionist principle in their cabotage system, that is, integrating both 'Cabotage Act' and 'Cabotage Rights'; and this can be managed by their relative technological and administrative competences.

Among the world leading economy, such as, the United States of America (the US), Cabotage Act implementation reflects concerns of the policy makers who are divided between annulment and sustenance of the 1920 Jones Act, which strictly protects the U.S. shipping industry from competitions by preventing foreign ships from helping even when disasters strikes like that of BP oil spill in the Gulf, after Hurricane Katrina, and after Storm Sandy etc. Analytically, the obvious truth about the Jones Act goes beyond non foreign participation to total denial of waiver concession and those legislators who posit for a reform always incline to fear that the extreme protectionist measures could be counterproductive especially in the context of the dynamic nature of contemporary global market and socio-economic interdependence among states in times of mishaps and emergencies. (<http://capitalresearch.org/2013/04/the-sinking-ship-of-cabotage-how-the-jones-act-lets-unions-and-a-few-companies-hold-the-economy-host>)

The point of emphasis now is that the US strict protectionism is hinged on her high technological background though she (the US) did not quickly realize that such a state could administratively manage a waiver regime based on emergency and even on non availability without much encroachment on her extreme cabotage protectionism. In other words, cabotage waiver, henceforth, permeates state boundaries, initiating a relaxed protectionism trend even in the US now (Ubakire, 2008:36).

But for developing economies, it will always be a different ball game because encroachment will be inevitable as their technologies, most certainly, cannot protect the cabotage and administratively withstand the influx of the waived ships (Cabotage Rights) although a necessary predicament that can only salvage the situation. Importantly, state's prospects still rely largely on the level of her administrative and technological know-how. Hence, such states could propel the cabotage to comparative advantage and economy of scale having nothing to worry much about inasmuch as productivity is competitively and progressively secured in sequence with an effective cost of production (Matthew etal: 2000:52,229).

In all, the overwhelming cabotage practice among states is integrated cabotage system or relaxed protectionism of 'cabotage Act' and 'cabotage rights' (waiver regimes). That is, protectionism (Cabotage Act) and liberalism (Cabotage Rights or waivers). This established system will augur well with highly or even semi highly technological and administrative countries. But a country whose technology is structurally backward and administration questionable, this type of cabotage system will definitely pose a challenge.

Nigeria being a developing country and the first to venture into cabotage in Sub Sahara Africa, it will be pertinent to examine her challenges so far encountered considering the level of her technology and administrative competency in adoption of the cabotage system. In the light of the above, examination of the Nigerian Cabotage Act becomes necessary.

THE NIGERIAN CABOTAGE ACT

The Nigeria Cabotage Act 2003 has fifty five (55) Sections divided into Nine (9) parts appearing in the skeletal form below:

Part I. (1. Short Title and 2. Interpretation)

This part comprises sections one and two, which defines Cabotage Act: its entailment and scope; and the legislative focus in detailing a new dimension for the regulation of the oil and gas industry in Nigeria by covering all the aspects of exploration, production and development activities.

Part II. (Restriction of Vessels in Domestic Coastal Trade

It has sections 3.Prohibition; 4.Restriction of Towage; 5.Carriage of Petroleum Products and Ancillary Services; 6.Navigation in inland Waters; 7.Rebuilt Vessels; 8.Application to Foreign Vessels. The above sections stipulate that a vessel other than a vessel wholly owned and manned by a Nigerian citizen, built and registered in Nigeria shall not engage in the inland and coastal shipping (cabotage), which extends up to 200 nautical miles of Exclusive Economic Zone ssss(EEZ) of the Nigerian coastlines, except vessels attending to distress or emergency call in Nigerian waters.

Part III. (Waivers)

9. Waiver for wholly Nigerian ownership; 10.Waiver on manning requirements; 11.Waiver on Nigerian built vessels; 12.Order for granting of waiver; 13.Duration of a waiver; 14.Ministers to

issue guidelines on waivers. The entire part deals with waivers, duration, procedure and conditions for granting them and requires the Minister of Transport to publicize waiver guideline

Part IV. (Licence To Foreign Vessels)

These Sections include: 15. Grant of licence to foreign vessels and conditions; 16. Terms and conditions of Licence; 17. Duration of Licence; 18. Suspension, cancellation and variation of licence; 19. Tariff on Licence; 20. Minister to issue guidelines on Licence; 21. Operating without Licence. These sections establish the modalities, conditions, guidelines applicable for granting of licence to foreign flagged ships wishing to engage in cabotage in Nigeria; and requisite penalties associated with defaulters of each section.

Part V. (Registration)

In sections 22. Registration; 23. Ownership Requirements; 24. Proof of Ownership; 25. Deletion from Register; 26. citizenship requirement for ship financing; 27. Temporary Registration; 28. Age of Vessels. This part provides for registration requirements as well as other matters and procedures associated with it.

Part VI. (Enforcement)

This part has sections 29. Special Register; 30. Enforcement Unit and Officers; 31. Power of enforcement officers; 32. Detention order; 33. Port Clearance to Vessels; 34. Publishing Requirements for employment of vessels. One notable importance of this section is the establishment of the Nigerian Maritime Administration and Safety Agency (NIMASA) to ensure that the Cabotage Act is implemented and regulated with powers to arrest and detain any defaulter.

Part VII. (Offences)

The sections are: 35. Offences against this Act; 36. Failure to comply with a requirement etc. of an enforcement officer; 37. False misleading statements; 38. Deemed separate Offence; 39. Liability of ship owners, companies and officers; 40. Strict liability and general penalty; 41. Jurisdiction. This part x-rays all the criminal activities and commensurate penalties related to cabotage.

Part VIII. (Cabotage Vessels Financing fund)

Sections 42. Cabotage Vessels Financing Fund; 43. Funding; 44. Collection, etc of the Fund; 45. Beneficiaries. This part sees the creation of the Cabotage Vessels Financing Fund to alleviate the financial burden on the citizens wishing to venture into coastal trading. There is also additional 2% tax on all the contract sum of any contract done by any contractor.

Part IX. (Miscellaneous)

In this part, sections 46. Regulation; 47. Licences, waivers on Board; 48. Requisition of Vessels by Minister; 49. Powers of Delegation; 50. Units of Account; 51. Transitional Provisions; 52. Vessels with valid Licence; 53. Repeals and Amendments; 54. Savings; 55. Savings as to Court Proceedings. All the components of this part are miscellaneous issues and conditions relating to transitional to the full implementation and repealing of the Act including that of the Minister's waivers and so on. (cf. Coastal and Inland Shipping (Cabotage) Act, No 5 of 2003, Law of the Federation of Nigeria)

From the above excerpt, it is understood that the Nigeria Cabotage Act is largely focused on stimulating and developing indigenous capacity competitively in the Maritime Industry with exclusion of foreign rivals (except on Waivers conditions of emergency and non availability). It should also be reasoned that such conflicting targets alongside pressures of economic interests from waived foreign competitors in the shipping industry is not achievable with laxity. Hence, NIMASA was established as an administrative organ of the Cabotage Act 2003 of a developing economy - Nigeria.

THE NIGERIAN MARITIME ADMINISTRATION AND SAFETY AGENCY (NIMASA)

The law establishing Cabotage in Nigeria invokes Section 30 of Part 6 of the Act to authorize and empower the Nigerian Maritime Administration and Safety Agency (NIMASA), formally the Nigerian Maritime Authority (NMA), to regulate, enforce and implement the compliance of the Cabotage in Nigeria. Section 31 grants enforcement officer powers to arrest and detain defaulter vessel in the conduct of his duties. Also, registration procedures as outlined in Part 5 are to be enforced by guidelines in Part 6 by NIMASA. Still, NIMASA should enforce Section 3, which spells out vessels manning, ownership, building etc.

Sections 22 and 29 specify the roles NIMASA plays in registration procedures. Collection of monies for and operation of the Cabotage Vessels Financial Fund are vital mandate of the NIMASA. As Ajiye (2013:13) noted, "The Minister may request the secondment of any officer to NIMASA from government enforcement agencies such as, Nigeria Ports Authority (NPA), Nigerian Inland Waterways Authority (NIWA), Joint Maritime Labour Industrial Council (JOMALIC), Nigerian Navy, Nigerian Immigration Services and the Nigerian Customs Services to the Cabotage Enforcement Unit".

In fact, the NIMASA enforces compliance of the entire Cabotage Act in alliance with cognate bodies listed above. In the words of Okoroji (2013:2) "NIMASA is germane to the successful enforcement of the law (Cabotage Act) and the development of the cabotage policy in Nigeria. The measure of the impact of cabotage Law implementation in the maritime industry has revealed the significant role of NIMASA and inter-agencies interactions". The above roles qualify NIMASA as an administrative organ of the Cabotage regime.

Now, the big question is: How could the Nigerian Shipping Lines still be struggling irrespective of the extensive and pragmatic ingenuity being injected in the Act? Why has the Nigerian shipping industry yet to compete favourably with its foreign counterparts despite the implementation of the Cabotage Act? Is it structural, technological or administrative incompetence? There are many unanswered questions so far on the stunted cabotage system generating issues of policy concerns largely across different efforts in enforcement. This ugly situation makes it imperative to make a critical analysis of the main cabotage policy and the challenges faced by the shipping industry in Nigeria.

CHALLENGES FOR IMPLEMENTATION OF CABOTAGE ACT IN NIGERIA

The challenges against smooth implementation of the Cabotage Act for sustainable shipping industry development in Nigeria include, but not limited to the following:

Policy Contradictions [Protectionism v. Liberalism]

With these dual opposite mandates, the Cabotage Act 2003 is practically contradictory. It is noted that Nigeria adopts both protectionism and liberalism policies, which are very hard to achieve by NIMASA. A review of these incompatible policies lacks clear-cut objectivity with conflicting implementations. When policies are not well configured in-line with the prevailing

circumstances, the system suffers. As a developing country, Nigeria's two opposite set-goals in protectionism and liberalism policies create a scenario of possible derailments and overlaps administratively and otherwise. For instance, the differentiation in staff capacity building, among others, can create administrative divide, and when there is relative coordination, it is prone to breeding incompetence with inestimable costs to worsen the situation.

With Nigeria's relative poor technology to protect her infant shipping industry from fierce competition of the foreign shippers, one can deduce a disconnection from economics concept of healthy competition. Against its ultimate goal, protectionism as a policy has underlying disadvantage of retarding the expected developmental ingenuity in shipping lines. To that effect, it will to a larger extent protect mediocrity and keep recycling laxity, indolence and of course unproductiveness in the industry. There is immeasurable gain in healthy competition, which defines actual advancement in what one can argue as a sine qua non for comparative advantage and economy of scale. It is discouraging to note that the policy of protectionism as captured in Part IV Sections 15 – 21, which provide for rules, terms, regulations, duration, guidelines regarding foreign vessels, of the Cabotage Act will indirectly shield the shipping industry from useful technological transfer needed from the foreign competitors. What that simply implies is shortage of ship constructing yards and repairs, which invariably affect shipping lines. Generally, this will in no small scale impede the ascension of Nigeria to 20 20 20 economic agenda and other macro-economic gains and benefits.

Estimably, the prize of Cabotage Act that encompasses local content development could be structurally jeopardized in a wave of protracted liberalized external influences by mal-administration. By extension, the inter-play of this potential administrative sabotaging could well engulf the country in a cycle of economic dependence spreading under human development. Hence: "some people therefore find it difficult to reconcile cabotage policy with the current worldwide trend of liberalization and opening up markets to foreign investors" (Usoro, 2003:14).

This is really a tough coast for Nigerian Shipping lines to sail. Obviously, Nigerian ships will be sailing thro and fro not having a destination to berth. Conversely, with the dynamic nature of international system couple with Nigerian low bargaining power in a competitive global economy, policy incompatibility will only result to goal incompatibility and consequent collateral inadequacies. Policy drives every economy. It should draw a line and set out targets in a temporal framework as defined in a budget. Otherwise, budget discordance is likely to amount to resource wastages and hence undermines priorities in national development. In all, the adaptation of both protectionism and liberalism in the cabotage Act prongs the country into dilemma with inconsistent opposite policies. The effect of this is prevalent confused state of purpose possible of souring international relationships in terms of modus operandi for disengaging and engaging foreign entrepreneurs.

Lack of Relevant Infrastructural Facilities

Lack of vessels and other facilities are among the obstacles confronting efficient operations of the Cabotage Act. It has been acknowledged that poor infrastructural development in Nigeria has produced negative effects on the Cabotage system based on this clause: "A vessel other than a vessel wholly owned and manned by Nigerian citizens, built and registered in Nigeria shall not engage in the coastal carriage of cargo and passengers within...exclusive economic zone of Nigeria". (Emphasis mine; Part 11, Section 3, 2003 Cabotage Act of Nigeria). Now, let us

examine these four cardinal conditions one after the other and see how the Cabotage Act has fared in context of Nigerian Situation.

Ship Building

By all standards, technology builds and repairs ships and of course creates jobs by chain reaction. The parameters set in the Cabotage Act succinctly lack this foundation to succeed. As a third world country, Nigeria largely depends on foreign technology to power her shipping industry. The giant step in protecting the local ship manufacturing plant is simply an inducement to harness and stimulate indigenous capacity. But how far will this go and what are the primary conditions that shape the system? It is seemingly unrealistic to target all Vessels exclusively built in Nigeria for Cabotage trading (Part 11, Section 3 of the Nigeria Cabotage Act). Such prohibitions created alongside indigenous deficiencies will obviously corrode the entire objectives of Part 11 Section 3, which is mandatory for Cabotage Act.

Here, the question of availability of this prohibition index is not only critical but also evaluative, and perchance where it is available, the focus on its competitive nature to the foreign counterparts becomes another concern (Akpobolokemi:2012). After all, the main aim of the Cabotage Act is to protectively develop indigenous capacity competitively. But in the case of Nigeria today, it is technologically evident that the major ship building company, Niger-Dock, cannot even build any ship to compete with any foreign counterparts. Also to worry about is the comfort zone the Niger Dock has permanently found itself in ship repairs (Ubadire, 2008:105). It is certain that such repairs will not be predominantly done by Nigerians. Obviously, a Cabotage Act that cannot relatively manufacture can also not relatively repair at least. We have two devastating scenarios of scarcity and incompetence. The sure bet to these are sinking cabotage vessels, which must call for and atone to the dictates of foreign rescuers.

Ship Ownership

It is categorically clear that the only yardstick that can guarantee appropriate local commercial fleet for cabotage role is local capacity to build ships. The argument is that there will be possibility of government subvention to fulfill the Cabotage and local content objectives in ship ownership. But there is a problem here insofar that the biggest Nigerian ship building company, Niger-Dock, has resorted to only ship repairs creating shortage of number of ships available for purchase. This circumstance coupled with expensive nature of ships, corruption and parallel poverty level make Nigerians lack the wherewithal to acquire foreign ships; and even when those foreign ships are eventually acquired, they face the danger of administratively being blacklisted simply because they are not built in Nigeria!

The Nigeria Cabotage Act truly betrays its incongruous ambition as enshrined in Part 11, Section 3, of the Act stipulating that the vessels for cabotage must be wholly owned by Nigerians whose financial handicap is a big factor. For the Cabotage Act to be successfully implemented, NIMASA needs to expend more efforts to address both the financial and technological challenges so that more ships could be built by Nigerians and for Nigerians.

Ship Manning

Nonetheless, vessels manning in the Cabotage system has been bedeviled by gross inadequacies. It is unjustifiable to discover that professional training of seafarers has been quite latent over a decade now (Akpobolokemi,2012). This is casting aspersions on the Maritime Academy of Nigeria (MAN) over incompetence requiring the Nigerian Seafarers Development Programme (NSDP) as a short term interventionist measure. Professional seafaring should focus on complete maritime education and standard training involving IT

based management procedures akin to international best practices. At this point, an reassessment of the already existing Maritimes Academies should be done for upgrades to standard maritime certificate awarding institutions in conjunction with other similar institutions.

Disappointingly, seafarers' trainees often constitute problems attributing stance to lack of incentives, poor training and other residual complexities resulting to lack of interests. Ubakire (2008) has alleged "over age" 'cadets' as major source of indiscipline among cadets. But before admonishing the unruly cadets for any reason, the maritime management (NIMASA etc) should bear much of the blame of this unwelcome development because of poor planning, failure to define and implement age criterion intake and consequent punishment regime for defaulters.

Seafarers are meant to be indigenous professional who are supposed to replace foreign competitors for a successful cabotage system. But when this is not the case, the system is predisposed to seeking for foreigners to cushion up the gap amidst demoralized handful seafarers. Ship manning is a business that requires both government and seafarer's commitment in order to achieve the aims of restricting competition by building local content that can go a long way even in moments of assisting coastal security needs.

Ship Registration

The draconian nature of vessels registration in the Cabotage Act generates a spill-over of issues. Vessels registrations for cabotage participation are unarguably predicated upon "wholly owned and manned by Nigerian citizens...built and registered in Nigeria" otherwise such vessels shall not engage in cabotage except on the premise of distress assistance to any persons, vessels or aircraft in danger in Nigerian waters as enshrined in the Part 11 section 4 (2) of the Cabotage Act. In Nigerian context, what that connotes is constant inevitability of such a distress call which will permeate and eventually undermine the entire system. Imagine a foreign rescuer bearing grudge and malice against the cabotage Act, the shocking consequence is better untold. By the way, how many vessels have been registered and how many are to be registered upon the laid-down conditionality?

This can be chaotic administratively and Nigeria might then end up registering no new vessels further and the after effect is simply poor shipping business! The Part V of Section 22.(1) of the Cabotage Act stipulates that vessels "shall meet all the requirements for eligibility as set forth under this Act (Cabotage Act) and the Merchant Shipping Act" to qualify to engage in Cabotage. It is our contention that apart from being too strict, it will amount to double standard creating barriers in that regard. The Cabotage Act should review its goals and objectives and fashion out more pragmatic regime.

Waivers

Another salient matter to consider about Nigeria Cabotage Act is the issue of waiver. Technically, the waiver granting procedure and objective of the Cabotage Act is totally a misconception and administratively erroneous. Firstly, Cabotage Act bears the notion of developing local content, at least in ship acquisition, and at the same time granting waiver though only based "on grounds of non availability" and 'emergency'. This liberal policy is a potential risk to the four cardinal points of the Cabotage Act. The argument being that the issue of availability in Nigerian cabotage regime is immensely improbable (Usoro, 2003:5).

Also, there are criticisms over the weakness and less challenging conditionality for the granting of the waiver to foreign ships as a result of insufficient cabotage vessels. With the situation on ground, it is difficult to project the reversal of this backwardness, which drastically distorts both the cabotage Act and the Nigerian shipping industry. To compound issues the more, there is a grave concern over unilateralism of the Minister of transport effecting waiver regime especially with the exclusion of such an important Indigenous Ship-Owners Association of Nigeria (ISAN), which supposed to actually assist with professional and privy information and criteria qualifying “wholly owned”, (Part 111, Section 9), Nigerian vessels for coastal trading (Ajiye, 2013:16).

The whole analysis boils down to the fact that the process of waiver consideration and approval will be subjective and thus undermines standard. Additionally, with the background knowledge of the dearth of Nigerian vessels and resultant desperation for foreign supports, there is every tendency that innumerable foreign shippers with ‘juicy’ application files will influence the Minister to compromise standard. Symbolically, this is poor administration. It should also be stated that a combine waiver approval regime will definitely limit indulgences thereby protecting the Cabotage Act to an extent. In fact, the whole flaw about waiver system is a potential ground for breeding foreign content instead of local content in shipping industry. It is our believe that concerted efforts of both the Minister of transport and professional organizations like ISAN will enthrone yardstick that guarantees wholesome, competitive and productive waiver regime.

Corruption and lack of Transparency

Human society is crippled with excessive possessive instinct that has played out in resource mismanagement of the Nigerian Cabotage administration. From the inception, meager resource in the tune of \$25 Million officially allotted for shipping development was astonishingly either embezzled or diverted to private coffers (Ajiye, 2013). Disgracefully, some of these perpetrators could be top government officials whose culture of service lacks complete transparency and patriotism. With capitalist tendency and ‘get-rich’ fast syndrome that has permeated the Nigerian system; a new phase of challenge has emerged.

Economic inter-dependence and trade liberalization have the possibility of making many indigenous shippers prone to be locked in the web of the global shipping racketeering evident in the fact that most Nigerians who claim to have ships do not have anyone at all! (Ubakire, 2008:93). What that implies is much of deceitful dealings, which might involve document falsification or even hiring foreign ships in a deal of mutual returns. This does not in any way reflect a positive future in view of distorting the statistics of the Nigerian shipping industry and consequently affecting government plan in the sector. It is a difficult issue to approach in such a situation where those deceitful indigenous shippers would again seek for government empowerment thereby complicating local content.

No wonder government in consideration of this gross unpatriotic phenomena suspended the “Ship Acquisition and Ship Building Fund” as a result of misconduct in the course of its appropriation (Ubakire,2008 :71). However, it will not be unwarranted to claim that the Cabotage Vessel Financing Fund (CVFF) might have equally suffered same fate in the hand of misappropriations. It is also important to know that such suspension, together with the manipulative attitudes of some major stakeholders, yields nothing but stagnation in the Nigeria shipping industry. This culminates in the loss of about four trillion naira (N4 trillion) annually to foreign investors whose shipping lines practically explored the loopholes created by

corruption and lack of transparency in Nigeria coastal trading and administration (Airahuobhor, 2014).

Inadequate Capital

Adequate finance is the life-line of every project. When projects that require strong capital base are under financed, such projects are always either abandoned or poorly dragged to a finish without required result. World over, shipping is known to be a very capital intensive enterprise and reasons for this is not far fetched in the level of technology involved in both ship construction and repairs. It follows the economics dictum of high profit return in solid capital investment. In Nigeria, the case is otherwise. And to compound issues, Part V111, Section 42(1) lacks specification of designated amount meant for the Cabotage Vessels Finance Fund (CVFF) as captured in "the Fund". This gives room for gross administrative anomaly. Thus, the weak and inadequate financial starting point for the CVFF by the government actually reveals some fault lines. In this modern and competitive market of the emerging economies of the globe, how could Nigeria deem it fit, as captured by Ajiye (2013), to apportion mere twenty five million dollars (\$25 Million) for development of shipping industry? It is simply a bad beginning for local content especially when there is still problem of misappropriation! To this end, the possibilities of accessing loans to support genuine stakeholders in the industry have been drastically made impossible by inadequate collaterals and other factors.

To worsen the situation, commercial banks, which are the depositories to the Cabotage Vessels Finance Fund (see Part V111 Section 44) lack proper understanding of shipping industry and thus incapacitated to providing investment and financial advice for the investors; and foreign bankers on their part always still cite inadequate collaterals (Ekpo, 2012:109), together with socio-political instabilities, as impediments to loaning Nigerian shippers.

That is not all; one can argue that other cognate institutions like insurance is detracted financially to render specialized services to the Cabotage system. The end result of these will be handicapped shipping industry with negative effects on employment and economy generally. Nigeria really needs both institutional and capital reviews and upgrading in this area if Cabotage Act, in reality, is aimed at developing and enhancing local shipping competitively.

Poor Enforcement of the Cabotage Act

From all indications, one can point that the Cabotage Act enforcement malady is self inflicting. A critical consideration of the Part VI Section 30.(1) of the Act exclusively empowers the Minister to "create an enforcement unit within the National Maritime Authority with appropriate operational guidelines...". These provisions and position, as it may well be, could be abused and we end up having an enforcement unit that reflects and operates on personal dictates and manipulations. Somehow, it is prone to administrative and political-will imbalances affecting full implementation of the Cabotage Act. In a rather carefree, nonchalant and lackadaisical attitude to service, there could be existence of cabotage ineffectiveness. Ineffective implementation of policy is tantamount to, if not worse than, not formulating that policy in the first place. At this point, it becomes an issue that measures to protect cabotage Act are in nature a regime of compromise and concession. As strongly noted by Ajiye (2013:17), "that none of the many foreign violators of the Act have been fined or sanctioned to deter others...."

This assertion entails cleverly renewal of foreign flagged ships in Nigeria as well as possibility of a designed channel, on the side of the Minister, for some selfish financial irregularities at the

expense of the Act that actually established its loopholes. Enforcement of the Act should engage systematic formation of experts whose experiences drawn from various fields would standardize enforcement protocol and procedure. The advantage of this is a possibility of eliminating any form of undue or bias measures or treatment to any cabotage shipping line including foreign rescuers operating on Cabotage rights or liberalization.

Surcharge System

It is important to mention that the 2% surcharge (see Part V111, Section 43(a)), for the Cabotage Vessels Finance Fund is to a large extent anti local content. No matter the degree of the percentage, surcharge is surcharge and it implies a kind of punitive measure, which is entirely inconsistent with the aims and objectives of the Cabotage Act. Administratively, the focus should be on developing local content with tax and surcharge reprieve for reasonable period of time in order to accommodate the developmental challenges innate in such a huge project like coastal industry. But here, the Act created some financial difficulties to those indigent indigenous participants it (the Act) completely failed to empower financially. This practice, if not reviewed and reversed, will certainly drag the whole cabotage system to a halt. Surcharge of any kind should not be for now and if expediently necessary should be below 1%.

The Cabotage Act and the Powers of the Minister of Transport

Generally, one often unnoticed challenge hampering the Nigerian Shipping lines in the Cabotage regime is the over concentration of the Act's principles on the office of the Minister of Transport without any strong Part and Section of the Act committed to check imminent abuses, which can affect indigenous participation. Although cabotage mainly resides with the transport portfolio, yet a good practice should inculcate a legislative mechanism to administratively and practically interpret the overriding powers of the Minister as captured in "where the Minister is satisfied that..."(Part 1V, Section 15 (1)), "as the Minister may deem necessary" (Part 1V, Section 15 (2)) etc. Or it can be arguably declared that the Cabotage Act's implementation is as the Minister of Transport may deem it necessary, which may not reflect constructive public opinion and concerns.

Restrictions of all Vessels Type and Size

The Nigerian cabotage Act 2003 is overreached with restrictions evident in Part 11, Section 6 of the Act. The worst contributing factor is the absence of technology to handle ship type and size and the accompanying disruptive effects on both the shipping lines and the oil and gas sector of the economy. If ships of all types and sizes bound for coastal trading must be wholly owned by Nigerians, the question then is: does Nigeria have, for now, the capacity to build and own such ships especially the ones required for oil and gas sector? The answer is obviously no! Even when there is capacity to build, most Nigerians do not have the financial capability to acquire the number of such ship types and sizes appropriate for oil and gas transportation. This being the case, Nigeria definitely resorts to foreign flagged ships and consequently loses about \$6.57bn annually as recently noted by Aluko (2013) To continue transporting her main cash products considering their indispensability to the economy it is advisable that ship type and size should be revisited to accommodate the situation on ground.

CONCLUSION

At the onset, the record breaking Cabotage Act was a welcome development among every Nigerian. It was a giant stride driven by monumental will-power of a nation of great minds. The projections were high and especially the landmark economy of scale and massive employment opportunity the Act could generate. It is a certainty that Nigerians started savouring a kind of jingoistic aura and could stand on top of the coastal waters without fear of being drown! This is

very encouraging and given the obvious massive support and, most importantly, the Cabotage Act's promising frontiers in the shipping industry via local content programmes. These factors revived the hope of Nigerians in the industry until the point of implementations.

Devastatingly, so many concerns emanating from the Cabotage Act itself began to engulf the already relished euphoria. There, it was discovered that the Act is, in reality, a product of self-destruction! How? First of all, it is discovered that there are neither enough cabotage vessels to carry the weight of the Cabotage Act nor enough technology to build vessels. Even when very few vessels brave it out, they are always being sunk and thus at the mercy of the foreign rescuers who incidentally are the competitors precluded from taking part in normal coastal trading but for emergency. The rescuers could strike a balance here inasmuch as emergency is inevitable in Nigerian maritime industry. Overall, the focal aim of Cabotage Act world-over is to develop indigenous shipping industry.

Essentially, cabotage offers protectionism weaved around engaging local potentials for competitive output. It is not out of share ambition for states to implement cabotage Act, after all, there could be optimum technology to support it. But cases abound where relatively less developing economies embark on the cabotage, leaving its implementation underutilized productively. Some of these countries may lack either administrative competence or adequate technology among others to actually achieve cabotage system.

Nevertheless, it does reflect a commitment to integrate the local resources in the quest for nation building. A lot of measures obtainable in this regard are not without stiff challenges. But, at times, it takes a bold step to venture into reforms irrespective of apparent difficulties in the process. It is imperative to note that the task of nation building requires large heart to embark on projects of daunting risks; caution and transparency should be the watch word. It is a bold attempt, in all consideration, for Nigeria to key into cabotage system given her obvious peculiar situations. It is also encouraging to see her meander the thorny paths of learning process as a journey of many miles starts with a step though such a journey is obliged to inscribe a learner sign on her system so that the entire traffic of international shipping industry and technology would coordinate with her, when needs be, and help her learn to sail safely on the dangerous shipping waterways.

All in all, the problems of the Nigerian shipping industry are lack of technological and administrative competence to carter for the two opposing cabotage policies of protectionism and liberalism, respectively.

RECOMMENDATIONS

1. As the main administrative organ of the Cabotage Act, NIMASA and the Parts and Sections of the Act establishing her functions should be reviewed to be able to administer the content of the Act very well
2. It is strongly advised that the Federal government of Nigeria should first of all implement policy content built on acquisition of relevant maritime technology before embarking on protecting shipping lines especially based on Part 11 Sections 3 &4 of the 2003 Cabotage Act.
3. Government should in that direction focus on building and sustaining more docks exclusively for ship constructions to complement the existing Niger-Dock and others, which have concentrated on repairs hitherto.

4. Therefore, Nigeria should neutralize the Cabotage Act, not only on the basis of emergency needs as captured in Part 11 Section 4(2) but also on the point of mutual cooperation and coordination between Local shipping lines and foreign counterparts to facilitate speedy technology transfer. This will also eliminate corruption imminent in over classified protectionism.
5. In-line with that, specialized banking system and adaptation of cognate institutions like insurance should be established to render specialized services to the sector.
6. Government should not only increase funding and incentives to the sector in order to create and facilitate maritime interests among Nigerians but also establish measures for proper appropriation of such funds and incentives.
7. In addition to MAN and other related institutions for maritime education, training etc, government should establish maritime resource centres and programmes, which will be anchored by the national media to sensitize the public on the opportunities the sector proffers.
8. Nigeria should review Part 11 Section 6 of the Act, which stipulates that a vessel of any type and size shall not engage in cabotage trading. This is rather too broad and over ambitious especially when the system lacks the capacity to build any vessels for now
9. There should be strategic coordination between NIMASA and other government institutions for harmonization and utilization of frameworks necessary for achieving cabotage objectives.
10. There should be strong legislation guiding waiver and enforcement regimes as they are often the points of interest diversions and focuses hampering the cabotage Act and local content.(10)
11. Patriotism is the key word for the Nigerian flagged ships as well as actualization of the local content dreams. Here, government should reward any patriotic act especially in the maritime sector. This process will shun corruption and sharp practices that can disrupt the Cabotage project.

References

- Airahuobhor Andrew, (2014), Cabotage Act, Vessel Fund, and many unanswered question, (Daily Independent), Business, Maritime
- Ajiye S. O. (2013:11-16), "Nigerian Cabotage: Its Policy, Prospects and Challenges", in *Journal of Economics and Sustainable Development*, (IISTE), Vol.4, No.14
- Akpobolokemi P. (2012), Challenges of Indigenous Shipping under the Cabotage and NOGIC Act, - a paper delivered at the local content summit by the house of representative committee on local content held on the 25th – 26th June, 2012 at the Presidential Hotel, Portharcourt, Rivers State, by the Director – General/CEO-Nigerian Maritime Administration and Safety Agency
- Aluko Akinseye, (2013), Cabotage Act: Issues and Policy Recommendations, (Punch News Paper), May, 30th. 2013
- Ekpo, E I(2012:109), "Impact of Shipping on Nigerian Economy: Implications for Sustainable Development", in *Journal of Education and Social Research*, Vol.2, No.7
- Garner, B. A. (1999:230), *Black's Law Dictionary*, West Group Publishing Company, USA., Sixth edition
- Matthews K., etal,[2013:52,229] (2000), *Economics*, (Addison Wesley), Fourth Edition
- Okoroji,L. (2013:2), An Assessment of the Impact of the Implementation of the Cabotage in Maritime Industry, Department of Transport Management Technology, Federal University of Technology Owerri,
- Shaw, M. N. (2003:490-492), *International Law*, Cambridge University Press, 5th Edition
- Ubadire A. W., (2008:31-33), The Impact of the Cabotage Act on Local Capacity Development: A Study of selected Indigenous Shipping Companies, - A thesis submitted to the Post Graduate School, Federal University of Technology, Owerri,

Uoro M. E., (2003:3,5), Cabotage Policy and International Maritime Politics - The Nigerian Coastal and Inland Shipping (Cabotage) Act 2003, -- a paper presentation at the annual Maritime Seminar of the Nigeria Maritime Law Association held on May13-14

-Coastal and Inland Shipping (Cabotage) Act, No 5 of 2003, Law of the Federation of Nigeria

WEBSITES

1. <http://en.wikipedia.org/wiki/Cabotage>
2. <http://www.merriam-webster.com/dictionary/cabotage>
3. <http://www.duhaime.org/LegalDictionary/C/Cabotage.aspx>
4. <http://definitions.uslegal.com/c/cabotage>
5. www.dailyindependentnig.com/2014/05/world-bank-poverty-nigeria