

“THE NEW CABOTAGE ACT - ITS INTENDED EFFECT ON THE LOCAL SHIPPING INDUSTRY.”¹

1. Introduction.

- 1.1 It is interesting and auspicious that our Association is the first to provide an opportunity through this seminar to x-ray the intended effect of the Cabotage Act few days after the President of the Federal Republic of Nigeria signed the Cabotage Bill into law². In order to properly appreciate the intended impact of the Cabotage Act [“the Act”] on the local shipping industry, it is essential to know what “cabotage” or “maritime cabotage” and its types are. “Cabotage” is “coasting trade” or “coastal trade”, that is, the movement of cargoes and passengers by ship between ports of the same coast or between ports of the same country and the exclusive reservation of the coasting trade of a country to ships operating under the flag of that country or to operate sea traffic within its coasts, or to operate air traffic [i.e. air cabotage], road traffic [i.e. road cabotage] or rail traffic [i.e. rail cabotage] within its territory³. This paper is however concerned with “maritime cabotage” which, the Act deals with
- 1.2 Therefore, a Maritime Cabotage Law or Act is a legislation reserving exclusively for a country’s national-flagged ships and nationals, navigation and trading within its coasts or from port to port within the country. It is purely for the regulation of domestic and not international shipping. In this regard, such law also regulates navigation and trading in a nation’s inland waterways, which trading in a nation’s inland waterways and coastal trade are usually collectively referred to as domestic waterborne trade or domestic shipping. The maritime cabotage law may be in a single shipping legislation, or in a combination of two or more shipping legislations, of a country. Over forty countries especially in Europe, North and South America and in South East Asia have already adopted one cabotage law or the other in order to attract the benefits derivable from a cabotage policy. However, it appears that Nigeria is the first country in the West and Central African sub-region to enact a cabotage law.
- 1.3 Two types of cabotage laws being applied by different countries today as dictated by their national, strategic and commercial shipping interests and local situations are the *strict* and the *relaxed* or *liberalized* cabotage laws. In a “strict” maritime cabotage law, the three elements of restrictions are that only vessels that are [a] **built**, [b] **owned**, [c] **crewed and operated solely by citizens** of the country are allowed to

¹ Presented by Mr. Michael Igbokwe at the Annual Maritime Seminar of the Nigerian Maritime Law Association held on 13th and 14th May, 2003.

² Its full name is “Coastal and Inland Shipping [Cabotage] Bill, 2003” and was assented to by the President on 7th May, 2003. It is popularly known as “OKEY UDEY’S ACT”, named after Dr. Okey Udey, Chairman, the House Committee on Transport, its sponsor.

³ See, “Dictionary of Shipping Terms”, by Peter Brodie, 2nd Edition at page 27. See also generally the papers titled “Advocacy paper for the promulgation of a Nigerian Maritime Cabotage Law” and “Advocacy Paper for the Promulgation of a Nigerian Maritime Cabotage Law Part 2...Present and Potential Problems of Cabotage and Recommended Solutions.” Pages 42-57 and 213-224 of the Supporting Documents for the Making of A Maritime Cabotage Law in Nigeria presented by Mike Igbokwe Esq. at the Public Hearing on the Cabotage Bill, at the House Committee on Transport, National Assembly Complex, Abuja in April, 2001.

participate in domestic shipping trade to the exclusion of foreign-built, foreign-owned or foreign-crewed and operated vessels. A maritime cabotage law is described as relaxed or liberalized if those three elements are, or any of them is, not strictly provided for to be met by the vessels participating in the cabotage, or there are some levels of foreign participation either in the ownership or building of the ships used and or in the nationality of the operators or the ships involved in the domestic shipping of a country. The *United States of America*, operates a “strict” cabotage policy is implemented by virtue of a combination of some of its shipping laws including “the Jones Act”⁴ which was passed for the promotion, protection and maintenance of a US domestic merchant marine by virtue of which Jones Act and other legislations, all waterborne goods and passengers between US ports are carried in US flagged ships, *built* in the USA, *owned* by US citizens and *crewed* wholly by US citizens but the “strictness” of the US cabotage regime can no longer be said to be absolute in view of some exceptions and relaxations now being granted in its application in certain cases by some US legislations. Greece has a restricted cabotage principle in which Greek passengers and cargo are reserved to Greek vessels⁵ and other EU vessels are now allowed in non-strategic mainland trades with vessels over 650 GT and waivers can be granted on the condition of reciprocity. As for the crew, it must be 100% EU nationals, more than 50% of the shares of the vessel must be owned by Greek nationals or by Greek entities more than a half of whose capital is held by Greek nationals.⁶

1.4 However, *Malaysia* operates a relaxed cabotage policy through laws which permit foreign-registered vessels to be temporarily licensed by the Domestic Shipping Licensing Board [DSLBS]⁷ to carry on coastwise trading where the Malaysian Shipowners Association [MASA] confirms in writing that there are no available Malaysian vessels to carry the cargo concerned⁸. The DSLB regulates and controls the licensing of ships engaged in domestic shipping under stipulated conditions to be met and based on applications by the parties concerned. In *Brazil*, where goods alone and later goods and passengers in cabotage trade were for only Brazilian vessels⁹, foreign vessels were in August 1995¹⁰ allowed to take part in cabotage shipping only if they are chartered by Brazilian shipping companies through bareboat, time and voyage charters and as a result of the 7th Constitutional Amendment in August, 1995, foreign cruise vessels were allowed to use coastal and inland routes thereby opening its 7,480 kilometer coastline to luxury transatlantic liners.¹¹

1.5 In the interpretation section 56 of the Act, unless the context otherwise provides—
“coastal trade” or “cabotage” means—

(a) *the carriage of goods by vessel, or by vessel and any other mode of transport, from one place in Nigeria or above Nigerian waters to any other place in Nigeria or above Nigerian waters, either directly or via a place outside Nigeria and includes the carriage of goods in relation to the*

⁴ See, Section 27 of US Merchant Marine Act of 1920 Public Law 66 – 261 also known as “the Jones Act”,

⁵ This is pursuant to Articles 165 and 166 Code of Public Maritime Law [CPML] Decree Law 187/73 although the legislation is now partly adapted to Regulation 3577/92 of EU on liberalised cabotage for the EU.

⁶ In its judgement of 27th November, 1997, Case C-62/96, the Court of Justice of the EU criticised Greece for its failure to fulfil its obligations on account of its Article 5 of CPML which provided for such measures.

⁷ Established under section 65B of the Malaysian Merchant Shipping Ordinance, 1952. The Malaysian laws regulating domestic shipping are the Merchant Shipping Ordinance and its 1977 and 1984 Amendments but in 1994 certain amendments were made to the Ordinance which subsequently were included in the Merchant Shipping Act [Amendment] 1994.

⁸ Available data shows the temporary licensing of foreign vessels is most pronounced in the domestic carriage of chemicals and oil.

⁹ Brazilian Constitutions of 1946 and 1988 respectively.

¹⁰ Federal Law 9.432/97

¹¹ See, a paper titled, “Current Cabotage Issues in Brazil” by Alessandra Catanante delivered at the IBA Conference in Cancun, Mexico in November, 2001.

- exploration, exploitation or transportation of the mineral or non-living natural resources of Nigeria whether in or under Nigerian waters;*
- (b) *the carriage of passengers by vessel from any place in Nigeria situated on a lake or river to the same place, or to any other place in Nigeria, either directly or via a place outside Nigeria to the same place without any call at any port outside Nigeria or to any other place in Nigeria, other than as an in-transit or emergency call, either directly or via a place outside Nigeria;*
 - (c) *the carriage of passengers by vessel from any place in Nigeria to any place above or under Nigerian waters to any place in Nigeria, or from any place above Nigerian waters to the same place or to any other place above or under Nigerian waters where the carriage of the passengers is in relation to the exploration, exploitation or transportation of the mineral or non-living natural resources in or under Nigerian waters; and*
 - (d) *the engaging by vessel in any other marine transportation activity of a commercial nature in Nigerian waters and the carriage of any goods or substance whether or not commercial value within the waters of Nigeria.*

Moreover, it is provided in Section 2 of the Act that “*Subject to the further provisions of this Act, no vessel other than vessels wholly owned¹² and manned¹³ by Nigerian citizen(s), built¹⁴ and registered in Nigeria shall engage in the domestic coastal carriage of cargo and passengers within the coastal, territorial, inland waters, island or any point within the waters of the Exclusive Economic Zone of Nigeria.” (underlining by me for emphasis). But Section 10 of the Act provides: “*The Minister may on the receipt of an application grant a waiver to any duly registered vessel on the requirement for a vessel under this Act to be wholly owned by Nigerian citizens where he is satisfied that there is no wholly Nigerian owned vessel that is suitable and available to provide the services or perform the activities described in the application.*” So also, section 16 of the Act states that: “*Upon application for a licence by a person resident in Nigeria acting on behalf of foreign owned vessel, the Minister may issue a restricted licence for the foreign owned vessel to be registered for participation in the coastal trade, where the Minister is satisfied...*” that certain conditions are met.*

1.6 It is submitted that from a combined reading of the aforesaid sections 56, 2, 10, 16 [and other sections including those dealing with ministerial waivers] of the Act, a liberal cabotage legal regime which I will describe as “liberal protectionism”, has been instituted by the Act for the local shipping industry. This is therefore an appropriate point to examine the intended impact of the Act on the local shipping industry.

2. THE INTENDED EFFECT OF CABOTAGE ACT ON THE LOCAL SHIPPING INDUSTRY.

Even though the impact of the Act on the local shipping industry intended by the framers of the Act could be seen from its explanatory note which states that “*The Bill seeks to restrict the use of foreign vessels in domestic coastal trade, to promote the development of indigenous tonnage and to establish a cabotage vessel financing fund; and for other matters related thereto”*, the writer intends to consider below, those intended bang along with others which he has detected from his study of the Act, against the background of the theme of this Seminar namely, “The challenges facing the maritime industry in the 21st century”. (underlining by me for emphasis).

¹² See section 4 of the Act. By section 6, a vessel is wholly-owned by a Nigerian citizen where its 64 shares are beneficially owned by a Nigerian citizen or by a company registered in Nigeria whose shares are 100% owned by Nigerians free from any trust or obligation in favour of foreigners.

¹³ Under section 7 of the Act, a vessel is wholly-manned by Nigerians where all the shipboard officers and crew employed aboard the vessel are exclusively of Nigerian citizenship.

¹⁴ A vessel is built in Nigeria where all its major components of its hull and superstructure are fabricated or assembled in Nigeria or in the case of rebuilding, the construction of any major components of the hull or superstructure is effected in Nigeria: see section 8 of the Act.

2.1 Liberal protection of the “infant” local shipping industry.

An intended effect of the Act on the local shipping industry is the institution of a “liberal protectionistic maritime industrial policy” for the protection of the local shipping industry from death or incapacitation due to the domination of carriages from point to point within Nigerian waters and unhealthy competition by the highly subsidised foreign vessels. In this regard, the Act sees the local shipping industry as a strategic industry which being in its “infant” stage of development and not being in control of indigenous shipping operations and ship ownership, in the interest of Nigeria's economy and national security, requires some guidance, conducive environment and protection from foreign competition so as to be nurtured into maturity and given room to develop through its acquisition and building of the necessary capacities to become sufficiently commercially viable and strong. Thus, the local shipping industry will be able to control and become very strong in domestic shipping before venturing into regional or international shipping where it will then be able to withstand competition from the highly subsidized foreign ships in international shipping. Alternatively, the Act intends that if the local shipping industry cannot or it is yet to compete favourably with foreign vessels in international shipping, it should for the time being be in a position to control and dominate carriages of cargo and passengers from point to point in *Nigerian waters*¹⁵.

The liberal protection by the Act creates for the local shipping industry an enabling environment and gives the necessary assistance and incentives to indigenous shipping companies, shipbuilders and seafarers in order to empower and position indigenous carriers and operators to be able to acquire more vessels, more experience and greater capacity for shipping and to compete fairly with foreign ship owners and among themselves in the carriage of cargo internationally or domestically without totally excluding foreigners and foreign vessels from participating in domestic shipping. This is why under the Act, only vessels that are wholly owned, wholly manned by Nigerian citizens, built in Nigeria and registered in Nigeria, are allowed to participate in cabotage trade whilst foreign vessels are granted ministerial waivers or licensed to participate in cabotage trade where there is no wholly-owned Nigerian vessel suitable or available to provide the services or perform the activities concerned.¹⁶ This intention is quite understandable because all countries that have enacted cabotage laws intend among other things that the laws would protect the local shipping industry from foreign shipping domination.

2.2 Cargo Support.

Another effect the Act is intended to have on the local shipping industry is the cargo support it is offering the industry. It is an invaluable saying in shipping that where there is no cargo to carry, vessels will not be needed to carry it and that if there are vessels to carry cargo and the cargo is not available or is insufficient, the vessels whilst accumulating daily running costs¹⁷ without employment, will very soon run the operator/owner bankrupt and discourage other persons from investing in shipping. A nation with such a shipping industry will have a depleted or a non-existent national

¹⁵ “Nigerian waters” is defined in section 56 of the Act as including “inland waters, territorial waters or waters of the Exclusive Economic zone, (respectively, together or any combination thereof) and the meaning given to them by the National Inland Waterways Authority Act, 1997; Territorial Waters (Amendment) Act, 1998; and the Exclusive Economic Zone Act, cap 116, Laws of the Federation of Nigeria.

¹⁶ See especially sections 2, 3, 5, 7, 8, 10 and 16 of the Act.

¹⁷ These costs include bunkers, crew's maintenance and salaries, insurance, hull maintenance etc.

tonnage. Although the Federal Government under the National Shipping Policy Act¹⁸ provided cargo support to the local shipping industry through cargo sharing and cargo reservation administered by the National Maritime Authority, the policy was suspended in 1999 in order to inter alia eliminate fraudulent and sharp corrupt practices that were said to be associated with its previous application.

So, the Act creates an avenue for cargo and passenger to be available so that the local shipping industry the indigenous operators and owners of cabotage vessels can remain in profitable shipping business, grow and expand their fleet of cabotage vessels. This is to be achieved by reserving carriage of cargo and passengers within the inland waterways¹⁹ or from any point to another within the Exclusive Economic Zone of Nigeria to only vessels that are wholly owned and wholly manned by Nigerians and built and registered in Nigeria, thereby excluding foreign vessels which had been dominating shipping within those areas unless where they had been granted ministerial waivers for not more than one year or restricted licences for not more than one year to be registered²⁰ to participate in cabotage trade because there is no wholly owned Nigerian vessel suitable and available to provide the services or perform the activities.²¹

By a twist of fate, due to the Federal Government's plan to privatize the refineries in poor state, liberalize the marketing and supply of petroleum products and its allowance of its marketers to import petroleum products, frequent vandalization of oil pipelines and the ruptures of the pipelines due to ageing equipment, the fact that 60% of the supplies of petroleum products to the South West are carried by coastal vessels through the Lagos jetties and shipping is a cheap means of transportation²², there will always be petroleum products to be carried by coastal tankers or lighters which will make coastal shipping by tankers employed by NNPC/PPMC or other oil marketing companies more attractive than other means of carriage and distribution of refined products to the needed areas or at least to complement the pipelines in the movement of refined products within the coasts. This is a substantial source of cargo exclusively reserved for the local shipping industry by the Act.

The barring of foreign vessels from towage and salvage activities within the cabotage area now make those activities available Nigerian vessels to perform unless a foreign vessel tows a ship in distress or in danger or the salvage is beyond the capacity of Nigerian salvage vessels or companies²³ is another form of cargo reservation by the Act for the local shipping industry. The carriage of materials or supply of services to and from oils rigs, oil platforms and installations and carriage of petroleum products between oil rigs, platforms and installations whether offshore or onshore or from port to port in Nigerian waters have been reserved for vessels tugs, barges which are wholly-beneficially-owned by Nigerians thereby breaking the monopoly of such activities by foreign vessels, foreign barges and tugs and creating more cargo for Nigerian-owned vessels, tugs and barges. It is noteworthy that a lot of the exploration and exploitation of economic resources and especially crude oil (the mainstay of our economy) by multinational and transnational oil companies are carried out off-shore

¹⁸ See Section 7 of the National Shipping Policy Act cap. 279, Laws of the Federation of Nigeria, 1990.

¹⁹ Section 5 of the Act.

²⁰ See, sections 14 and 18 of the Act.

²¹ See sections 2, 10 and 16 of the Act.

²² Sourced from an undated paper titled, "Supply of Products/Chemical Tankers and Tug Boats to NNPC" written by an undisclosed author and obtained from the MTD, PPMC.

²³ Sections 3(2) and 9(a) of the Act.

and within the Exclusive Economic Zone and that there had been serious agitations by indigenous shipping companies for them to be allowed to participate in the carriage of the crude oil and petroleum products generated within the Exclusive Economic Zone which carriage foreign vessels have been dominating at their expense. The Act will therefore restrict foreign vessels from and allow Nigerian - owned vessels to carry, the cargo and passengers generated in those areas as a result of oil exploration and exploitation activities at least within “Nigerian waters”.

Furthermore, by the extension of the area of the operation of cabotage trade up to the Exclusive Economic Zone of Nigeria which is 200 nautical miles measured from the low water marks or baselines and beyond the territorial waters (which is 12 nautical miles from the baselines), the amount of activities to be performed, the services to be provided and cargo to be carried by vessels within the Exclusive Economic Zone which would now be reserved for local shipping companies participating in cabotage has been increased beyond what used to be available. This will bring about the reservation of the activities in the zone relating to shipping for the economic exploitation and exploration of the zone, which Nigeria has sovereign rights over under international convention,²⁴ for the local shipping industry. Nigeria will not be the first country to do such a thing because the Japanese Government in 1977 set up a 200-mile fishery zone around its coast which it reserved for its nationals except Koreans and Chinese.²⁵

2.3 Promotion of the Development of Indigenous Tonnage.

One of the greatest needs today in the local shipping industry is adequate tonnage for domestic and international shipping. In 1979, when President Olusegun Obasanjo was leaving office as a military Head of State the Nigerian National Shipping Line [NNSL] (which was liquidated in 1995), had 19 ships and Nigeria’s fleet stood at 26 ships of combined tonnage of over 552,000 deadweight²⁶, but by the time President Obasanjo became a civilian Head of State 20 years after in 1999, only one of the vessels called *MV River Mada* but renamed *MV Trainer*, remained. In April 2003, the *MV Abuja*, which was acquired for the Nigerian Unity Line in 1995, was auctioned for far below its cost price. By some of its provisions, the Act is therefore intended to touch the development of tonnage for the local shipping industry and ignite a fire of tonnage acquisition and increment needed to lift cargo in view of the importance of shipping to the Nigerian economy.

One significance of the cargo support is that more Nigerians than before will be attracted to invest in vessels and in shipping business thereby increasing the number of vessels acquired and registered in Nigeria in the Special Register for Vessels and Ship Owning Companies engaged in Cabotage²⁷, and the national cabotage. If Nigeria cannot have and is yet to afford a high number of deep-seagoing vessels, at least it can due to the Act begin the development and growth of a Nigerian-cabotage fleet which it can use for the control of waterborne commerce on its coasts and inland waterways thereby becoming a maritime economic power in the West and Central African sub-regions if not Africa. Nigerian cabotage law will help Nigeria to attain this benefit. A developed and grown cabotage-induced domestic fleet/tonnage

²⁴ See Article 56 of UNCLOS.

²⁵ See, “Formulation of Japan’s Ocean Policy” by Prof. Hideo Takabayashi, Emeritus Professor of Kyushu University[1994] at page 5.

²⁶ See “Maritime under Democracy” by Ray Ugochukwu, David Ogah, Dele Aderibigbe and Francis Ugwoke, 2003 at pages 53 and 62

²⁷ Sections 2 and 23 of the Act.

becomes for the local shipping companies, an appropriate entry point to international regional and deep-sea shipping and which will prepare them well for competition with foreign ship owners in international deep-sea shipping.

Moreover, Nigerian shipping companies can now hire foreign registered/owned vessels on **bareboat charter**²⁸ terms which allow the vessels' full control and management by Nigerian citizens or companies wholly-owned by Nigerians free from any trust or foreign obligation and obtain vessels on mortgage finance provided inter alia that they must be under charter for not less than three years, and register them in the Special Register in order to operate them in cabotage trade.²⁹ The two advantages of this provision, which lead to the promotion of the development of indigenous tonnage, are that it will enable Nigerian shipping companies that have contracts but lack the capital to purchase new or used vessels and those which have short-term contracts to execute but do not want to expand their fleet of vessels, bareboat-charter vessels and register such vessels to execute the contracts without losing the contracts because they lack the finance to buy vessels. Thus, just like within 20 years, the Jones Act fleet doubled in size and tripled its productivity to the point where it routinely carried more than 1 billion tons of *cargo* and 100 million *passengers* between US ports each year, Nigeria's domestic fleet will similarly grow and make similar contributions to the Nigerian economy and the local shipping industry through the implementation of the Act.

2.4 Financial assistance for ship acquisition:

Ship acquisition being capital intensive, only the few indigenous shipping companies that have the finance or the financial support of some banks and financial institutions are able to acquire and invest in vessels. It has also not been easy or possible for Nigerian banks to finance acquisitions of vessels by the local shipping industry because many of them are undercapitalised³⁰ and are usually interested in giving short-term loans with high interest rates ranging between 20% and 45% per annum thereby discouraging local shipping companies from approaching them if the business they require the acquisition of vessels for cannot on the basis of the stringent conditions attached thereto, be profitably executed. One of the causes of the low number and types of vessels on the Nigerian Ship Register is a lack of adequate finance and funding or long term credit facilities at concessionary rates for acquisition of vessels and a lack of incentives that could encourage Nigerian ship owners/operators to register their vessels in the Nigerian Ship Register. The Federal Government passed a law to constitute the Ship Acquisition and Building Fund to be administered by a committee made up of members of the National Maritime Authority³¹, in order to assist Nigerians in the development and expansion of a national fleet but the FUND has been recently restructured into Fleet Expansion and Maritime Infrastructural Development (FEMID) by the National Maritime Authority in order to better meet the challenges of funding ship acquisition.

Consequently, by constituting the Cabotage Vessel Financing Fund ("the Fund") "to promote the development of indigenous ship acquisition capacity by providing

²⁸ A bareboat charter, also known as a demise charter is the lease or hire of a "bare" ship [without the master and crew] and during the charter the lessee is treated as the owner of the ship employing the master and crew of the ship. see: Franco Daval Ltd-v-The Owners M/V "Vitali II" & Anor 3NSC630.

²⁹ See sections 23(4), 24(3) and 27 of the Act.

³⁰ The current minimum share capital required to be met by Nigerian banks is N1 billion, but some of the banks are yet to have such capital and are in financial distresses, whereas prices of some new ships are higher than N1 billion.

³¹ See section 13 of the National Shipping Policy Act, cap 279 of LFN.

financial assistance to Nigerian operators in the domestic coastal shipping”³² the Act intends to complement FEMID and impact the local shipping industry in the area of provision of credit facilities to Nigerians and shipping companies wholly owned by Nigerians³³ for their acquisition of vessels for cabotage trade. To accomplish this goal, the Fund which shall be collected by the National Maritime Authority and deposited in commercial banks and administered under the Transport Minister’s guidelines, has an in-built mechanism for its generating the income for its use and with little or no dependence on the Federal Government’s financial contribution by its stipulating that monies to be paid into it were made up of, a surcharge of not more than 2% of any cabotage contract performed by any vessel, such a sum as is determined and approved by the National Assembly, monies generated under the Act as fines, tariffs and fees for licences and waivers and interest on its Fund and repaid loans³⁴. is one of the ways the Act is intended to impact on the local shipping industry. The payment of 2% of the contract sum performed by the vessel is quite a departure from the previous Ship Acquisition and Building Fund, it is novel, fair and reasonable considering the fact that brokers collect as brokerage fee from ship owners, 1.5% of any contract sum realised from fixtures or businesses they generate for vessels. The Fund is also autonomous in that what it generates is not payable into the Consolidated Fund distributed according to the 1999 Constitution, and so it is usable for the purpose prescribed. Of course, with access to readily available funds for acquisition of cabotage vessels and availability of cargo, indigenous shipping operators will acquire more vessels to be registered in the Special Register and the national tonnage will increase.

2.5 Capacity Building in the manning, building and ownership of ships.

Many of the 1297 officers of the various grades of seafarers trained by the Nigerian National Shipping Line Limited before it collapsed are either dead or inactive or aging, whilst cadet sea officers educated by the Maritime Academy of Nigeria, Oron cannot be placed onboard vessels for sea training because of the absence of Nigerian-registered vessels on deep-sea trading and the problems faced by the *MV Trainer*, (the only remaining vessel owned by Nigeria after the sale by auction of the *MV Abuja* in April, 2003) when it could not provide the needed sea-training for Nigerian cadets. There is therefore now the fear that as the experienced seafarers are leaving the scene, there is a gap that will require urgent filling up with Nigerians, otherwise foreign seafarers would catch in on the vacuum and take the jobs which Nigerian seafarers ought to have taken. As at 2000, Nigeria with a coastline of over 823 kilometres had a pool of only 975 officers and 1900 ratings, Ghana had 1897 officers and 7000 ratings whilst the Philippines had 50,000 officers and 180,000 ratings. Moreover, now that Nigeria has been White-Listed by the International Maritime Organization, Nigerian coastwise trading personnel, sea officers, ratings, dockworkers, merchant ship operators require adequate 1978/95 Standards of Training, Certification and Watchkeeping Convention-compliant competency education and training including short simulator courses for updating/revalidating their certificates. In the face of this, many Nigerian seafarers lack the technical and technological expertise required for modern operation and management of ships or shipping companies.

³² Section 43 of the Act.

³³ See section 45 of the Act.

³⁴ See section 44 of the Act.

Many Nigerian shipyards or ship repair yards are either dead or undercapitalized or abandoned or under-capacitated or under-utilized and there are no figures as to their capabilities and the types of vessels they can build or repair. The National Inland Waterway Authority's shipyard in Warri is on lease to Oscar Marine which uses it. Since its commencement of business in 1986, Nigerdock built only about 28 small crafts, 22 of which are 4 passenger ferries, 4 mooring launches, 5 harbour launches, 4 water buses and 5 vehicular ferries. It has not built tankers, trawlers, or general cargo vessels or tugs, but from its Ship Repair List for 1985 to 1997 and 2001, it has dry-docked and repaired along quay 400 and 199 vessels respectively, the sizes and types of which were unknown. Nigerdock has repaired 97 *tankers*, 76 *fishing/shrimp trawlers*, 25 *General Cargo/Merchant Vessels*, 20 *Naval Ships*, 20 *Tugs*, 9 *Passenger/Vehicular Ferries* and 1 *Gas tanker*.³⁵ Although it claims to have the capacity to construct vessels of up to 30,000 deadweight, repair vessels of up to 25,000 deadweight and construct offshore/deepwater platforms, offshore buoys, yokes, piles, mooring systems, jackets, flowlines and risers³⁶, its majority shareholders have already indicated that they were not considering shipbuilding on which they had not started detailed study because they were disadvantaged in competing with other shipbuilders, but would concentrate on simple transport modes for inland waterways such as barges for cargo and small light crafts or vehicular ferries for passengers and would have to upgrade the shipyard technically and technologically before it would be in a position to build vessels.

On the question of ownership of vessels, the point of non-existent or very low national tonnage has been made in paragraph 2.3 above. None of the sophisticated seismic ships, drill ships, drilling and production platforms, floating, production, storage and offloading [FPSO] vessels, pipe-laying vessels, anchor-handling tugs, maintenance vessels which are being used by the transnational oil exploration and producing companies within the limits of Nigeria's Exclusive Economic Zone is on the Nigerian register or are shown to be owned by Nigerians. Data obtained from the National Inland Waterways Authority [NIWA] in early 2002 shows that 95% of its 39 inland waterways vessels which are made up of passenger/cargo vessels, tugs, patrol boats, survey boats and launches are grounded and that only 2 of its ferries have been repaired and were put to use at Calabar and Yenogoa. Its shipyard in Warri is on lease to Oscar Marine, which now uses it. Consequently, not many vessels are currently on the Nigerian Ship Register.

From the above picture of the local shipping industry, it is obvious that at present, the indigenous shipping industry lacks the capacities or has various low capacities in technical, manning, technological, and managerial/operational areas which are needed to successfully run cabotage or deep-sea shipping business activities thereby incapacitating Nigerians in participating in and dominating domestic and international waterborne trade. Therefore, in recognizing that Nigerians still lack the capacity to own or build or crew certain vessels used in domestic waterborne trade, the Act provides for the granting of ministerial waivers or restricted licences to foreign vessels to perform the service or execute the activities within the cabotage areas when

³⁵ Although the nationalities of these ships are not discovered, this is an indication of the commonest types of vessels operating and being serviced within the Nigerian domestic shipping industry and which are making use of the repair services of Nigerdock. It may also be an indication of the size of cargo available locally since the nature of available cargo attracts the type of vessel to carry it. Crude oil and refined petroleum products, fishing activity and fishes and general cargo services can rightly be taken to be in such a sizable quantity in Nigeria as to attract the high number of such vessels being repaired by Nigerdock.

³⁶ Congratulatory message of Nigerdock to the Minister of Transport, as he prepared to assume the office of the next President of MOWCA at page 16 Maritime Quarterly, June, 2001 edition.

no Nigerian vessel is suitable or available to perform or execute it. These waivers are mainly to ensure that there is no vacuum created by the implementation of the Act on account of a lack of local capacity and technology to build, own and of the experienced hands to man the vessels that would engage in the activities and or provide the services which will be available to Nigerians due to the exclusion of foreign owned or foreign-built vessels and foreign seafarers from cabotage trade.³⁷

Against the above background, the Act is intended to affect the local shipping industry by facilitating the building of local capacities to man³⁸, build³⁹ and own⁴⁰ cabotage vessels and to carry cargo on its waters, through its stipulations that only vessels wholly manned and wholly owned by Nigerians, built and registered in Nigeria can participate in cabotage trade so that the absent or low capacities in those areas can be developed and increased respectively through the implementation of the Act. To curb if not eliminate the practice whereby Nigerians will be fronting for foreigners and holding shares as nominees or in trust for foreigners, the Act prohibits such “Nigerian” companies from participating in cabotage⁴¹. Due to the fact that the Act will limit domestic waterborne trade to Nigerian-owned and built, crewed and registered vessels, it will bring about the establishment of Nigeria-only ownership and control over the domestic fleet, domestic marine transportation system and the national maritime infrastructure.

Since water transportation is a key aspect of the Nigerian economy, the Act is intended to pave way for Nigerians to own and control, and retain the ownership and control of the operation of such a key section of the Nigerian economy and to eliminate or drastically reduce foreign control, domination and competition in that sector and prevent avoidable damage to the Nigerian economy through foreign manipulation. The one year after the commencement of the Act given before the enforcement of its provisions⁴² will give both the local shipping industry and the foreign vessels and their owners, enough time to prepare for the impact of the Act on domestic shipping.

By restricting cabotage trade to only Nigerian-built and/or owned vessels the Act is intended to induce through an expected increased national tonnage, the development, technological upgrading, growth and resuscitation of the dead Nigerian shipyards and dry-dockyards as a result of an increased patronage by a large number of Nigerian shipping companies which will need to have their coastal ships built, upgraded or repaired in Nigeria for quicker services and conservation of foreign reserves. The shipyards could be building new domestic vessels e.g. tankers, bulk carriers, tugs, barges, containerships, roll-on roll-off vessels, ferries, cruisers and dredging vessels, to meet the needs of the local shipping industry and also will have enough demands to maintain their full capacity utilization. The increased need to build and repair and maintain the Nigerian-built and Nigerian-owned vessels at Nigerian shipyards and dry-dockyards including Nigerdock, will develop indigenous capacity in shipbuilding and repairs and in turn lead to more business and more revenue for Nigerian shipyards.

³⁷ Sections 12,13, 14, 15, 16 and 17 of the Act. See an article titled, “Reasons for Ministerial Waivers”, written by Mike Igbokwe and published in The Guardian and The This Day newspapers in June, 2002.

³⁸ See sections 2 and 7 of the Act.

³⁹ See sections 2 and 8 of the Act.

⁴⁰ See sections 2, 6, 43, 23, 24 of the Act.

⁴¹ Sections 6(2) and 24(1)[a] of the Act.

⁴² See section 51 of the Act.

2.6 National Interest – economic crisis and national emergency, defence & security.

The depletion of national tonnage makes inevitable, reliance by Nigeria and the local shipping industry on foreign vessels at all times but in times of any national or international emergencies or crisis or conflicts, foreign vessels will be unwilling to come to Nigerian coasts thereby jeopardizing Nigeria's national security and economy.⁴³ Moreover, Nigeria has existing multilateral agreements with countries and also under the ECOWAS Treaty mandating its armed forces to participate in the peace keeping/maintenance and enforcement activities of ECOMOG in West Africa, pursuant to which its Navy and Army and Air Force had been involved in peace enforcement/keeping in Liberia and Sierra Leone.

By stipulating that in times of economic crisis or national emergencies, the Transport Minister can by an order require vessels registered for cabotage under the Act, to provide essential services to sustain basic needs of the people and to fulfill existing multilateral agreements⁴⁴, the owners of the vessels involved in cabotage trade will henceforth be prepared to make their vessels available upon being requisitioned on such occasions, to the Federal Government to meet the waterborne transportation needs of the Armed Forces for the quick deployment of its military personnel, equipment and supplies in times of emergency or economic crisis in the West African sub-region to meet its multilateral agreements under ECOWAS Treaty and also to lift crude and petroleum products and other essential services to sustain the basic needs of the people. This saves our Armed Forces the enormous cost of purchasing, maintaining and manning such vessels in times of peace and conserves the budgetary allocation that would have been spent for the acquisition of vessels for the Nigerian Navy, for application of the resources to other sectors of the Nigerian economy

By this provision, the Act also intends to affect the local shipping industry by compelling its cabotage fleet to readily give the Nigerian Armed Forces especially the Navy, access to Nigerian ports and inland waterways and provide mobilization crews for government ships. In this regard, it must be stated that the Nigerian shipping industry will not be the first shipping industry to supplement the naval and national fleet. For instance, the domestic vessels operating under Australian cabotage laws were recently crewed for the deployment of the Interfet Forces in the East Timor crisis. In the US, the Jones Act fleet also contributed immensely to her military needs in the transportation of military personnel and equipment to the Middle East during the Gulf Wars of 1990-1991 and during the Bosnian operations of 1995.

2.7 Revenue and Conservation of Foreign Earnings.

Another area where the Act is intended to have an impact on the local shipping industry as a source of revenue generation and conservator of foreign earnings. In this regard, the Act provides for payments of tariffs for granting ministerial waivers to foreign vessels⁴⁵ to participate in cabotage, fees⁴⁶ for granting restricted licenses to

⁴³ One of the alleged causes of fuel scarcity in Nigeria in March, 2003 was the breaking out of the American-Iraq war which prevented tankers from coming to Nigeria. In 2002, as a result of "bunching" caused by 100% physical destination inspection of imported goods introduced by the Federal Government which led to congestion at the Lagos ports, foreign vessels were reluctant to carry cargo to the Lagos ports and eventually increased freights which caused increased prices of goods.

⁴⁴ Section 49 of the Act.

⁴⁵ See section 20 of the Act

⁴⁶ See sections 16 and 17(2) of the Act.

foreign vessels to be registered to participate in cabotage trade and fines ranging from N100,000 to N15 million as penalties for contravention of some of its provisions depending on the gravity of the offences⁴⁷. These tariffs, fees and fines form one of the sources of the Cabotage Vessel Financing Fund constituted under the Act⁴⁸ and so the higher the number of vessels granted waivers and restricted licences, or vessels and shipping companies or persons fined for violating the provisions of the Act, the higher the revenue accruing from the implementation of the Act for financing cabotage vessels and expanding national tonnage. The implementation of the Act will result in increased revenue to the State and Federal Governments because many employed seafarers and other maritime workers will pay personal income tax to the State Governments whilst the local shipping companies that will own and operate the cabotage vessels and the shipyards will pay corporate tax to the Federal Government and import duties on the imported steel for repairing and making vessels. Tourism, which the ferries in cabotage trade will encourage, will also yield revenue to the government.

Furthermore, due to the fact that cabotage vessels must be wholly manned, wholly owned by Nigerians and built and registered in Nigeria, the foreign earnings which would have been expended on the building/repairs or purchasing of cabotage vessels abroad and the employment of foreign seafarers to man cabotage vessels would now be saved and the local shipbuilding industry and seafarers would earn the income. This will reduce if not stop capital flight and the conserved foreign exchange earnings can then be channeled by the Federal Government towards developments of shipping and socio-economic infrastructure and the reduction of the national debt which was in 2001 put at US\$28.64 billion by the Debt Management Office⁴⁹.

2.8 Boom in economic activities.

1.0 The Act is also intended to have multiplier effects on the economic activities in the local shipping industry by its various provisions. The Cabotage Vessel Financing Fund collected by National Maritime Authority will be deposited in **commercial banks** and administered under guidelines proposed by the Minister and approved by the National Assembly.⁵⁰ Ships acquired by local ship operators/owners through mortgages or credit facilities from financial institutions and by charterparties are registerable for cabotage trade if the charterer is for at least three years and if the charterer and mortgagee meet Nigerian citizenship requirements⁵¹. The above roles to be played by **financial institutions** will boost their deposit bases, cause them to have shipping desks to handle the financing of the building and the acquisition of coastal vessels, train staff in the acquisition of skills and modes of ship financing and shipping and expose them to ship financing. The availability of cargo and passengers to sustain their business will make domestic shipping companies attractive to credit facilities for fleet and business expansion and to attract more investors into coastal shipping business. **Insurance companies** will be engaged to insure cargo, vessels, seafarers and other maritime workers whereas the Nigerian **shipyards and dry-docks** will have greater patronage in building and repairing of ships. The **construction industry** and engineers would also benefit from the construction, expansion and repairs of ports and dredging of the inland waterways while companies in information

⁴⁷ See sections 36 to 38 of the Act.

⁴⁸ See section 44(c) of the Act.

⁴⁹ Malaysia is one of the countries that achieved conservation of foreign reserves through the implementation of its cabotage law.

⁵⁰ See section 46 of the Act.

⁵¹ See section 27 of the Act.

technology systems will be engaged to supply and maintain the marine radio communication and radar systems for safe coastal navigation. **Freight forwarders, shipping agencies, shipping consultants, maritime lawyers** and those supplying services needed in the local shipping industry will be affected by a boom in business and patronage due to the implementation of the Act. Freight income that would have been earned by foreign vessels will be earned by Nigerian cabotage vessels. These increased economic activities in the local shipping industry will increase the gross national product as cabotage has done in other countries.⁵² A lot of private shipping companies will arise in response to opportunities created by the Act and foster the growth of a national tonnage. Malaysian coastal fleet which has grown to a choice of modern fleet of about 900 vessels made up of 210 general cargo ships of 386,000 grt, 63 chemical tankers of 467,000 grt and 16 container ships of 76,000 grt] with about 1.4 million grt, compared with about 500,000 grt in 1990.⁵³

2.9 Safe shipping and clean marine environment

Although under the Merchant Shipping Delegation of Powers Notice 1963, the Government Inspector of Shipping (which has now been merged with the National Maritime Authority), is empowered to detain and release unsafe ships, the provisions of our Merchant Shipping Act are not adequate to cover new areas of safety of shipping and vessel-sourced marine pollution. Moreover, the IMO conventions mandating vessels to carry certificates of safety management and documents of compliance showing that the conditions of the ships or their equipment comply with necessary certification standards⁵⁴ in order to achieve its policy of “cleaner seas and safer ships” have either not been ratified by Nigeria or have been ratified but not yet domesticated by Nigeria. In Nigerian law, without the provisions of those ratified conventions becoming part of Nigerian municipal laws by being enacted as Act(s) of the National Assembly⁵⁵, they cannot be enforced against any substandard local or foreign vessel that is engaged in cabotage trade and in breach of the international conventions. Due to the high cost of acquiring, running and maintaining vessels and the current domination of carriage of cargo within Nigerian waters by foreign vessels, a lot of the vessels being operated in Nigerian waters are substandard and rusty buckets thereby posing risks of marine casualties and ship-sourced pollution to the users and marine environment. No wonder why the Act permits *registered* vessels which are over 15 years old at the date of its commencement but which are certified seaworthy, to be eligible for participation in cabotage trade for five years⁵⁶. In fact, there is the fear that in view of the phasing out of single-hulled tankers in other parts of the world, those single-hulled vessels may find a haven for their operation in Nigerian waters.

However, by stipulating that a foreign vessel seeking to be granted a restricted licence to participate in cabotage trade must *in compliance with international or regional conventions (whether or not Nigeria is a party to the convention)*, possess valid

⁵² The US domestic waterborne transportation contributes US\$7.7 billion annually to the US gross domestic product in form of freight revenue alone.⁵²

⁵³ This was a part of the Malaysian experience which increased its national tonnage after some years of the implementation of its cabotage policy started in 1980. See, Growth and Development of Malaysian Merchant Fleet, Malaysian Maritime Yearbook 2000/2001 at page 24 published by the Malaysian Ship owners Association.

⁵⁴ For instance, MARPOL 73/78, International Safety Management [ISM] Code made pursuant to SOLAS 74/78/88, Regulations 12, 13 and 19 of the International Convention on Safety of Life at Sea [SOLAS].

⁵⁵ See section 12 of the 1999 Constitution.

⁵⁶ See section 29 of the Act.

certificates and documents⁵⁷ and are to be bound by all safety and pollution prevention requirements imposed by Nigerian law and that any vessel to be registered for use in cabotage trade must possess all certificates and documents *in compliance with international and regional conventions to which Nigeria is a party* including all safety and pollution requirements imposed by Nigerian law and any international convention in force⁵⁸, the Act intends to ensure that the fact that Nigeria is not a signatory to any pollution prevention in force should not be an excuse for foreign vessels to be licensed to participate in cabotage trade not to comply with them and non-domestication of any of those conventions which Nigeria has ratified, will not be an excuse for any vessel to be registered for cabotage trade not to comply with them. Thus, the local shipping industry is to be protected from the operation of sub-standard and unsafe foreign vessels [including Flags Of Convenience⁵⁹] and Nigerian vessels known for low safety standards and pollution hazards which will not be licensed or registered to trade in Nigerian waters thereby reducing the risk of marine casualties and vessel-sourced pollution and degradation of the marine environment. Moreover, by making compliance with the safety and anti-pollution requirements pre-conditions to the *licensing of foreign vessels* and *registration of Nigerian vessels* to participate in cabotage, the Act intends to enforce on the foreign and Nigerian vessels, the requirements of those conventions not yet signed or signed but not yet ratified by Nigeria, but which are for safe shipping and clean marine environment and in the interest of the local shipping industry. This is the beginning of the loss of patronage by and the disappearance of, the substandard vessels currently being used by foreigners and Nigerians in Nigerian waters and is intended to induce the introduction of the use of new and upgraded standard environment-friendly vessels into Nigerian domestic waterborne trade. This is a well-intended impact of the Act on the local shipping industry.

2.10 Extension of the territorial jurisdiction of the Federal High Court.

This impact especially as it affects ship arrest in any admiralty actions *in rem* arising from cabotage trade, must be of immense interest to maritime lawyers. The Federal High Court has and exercises jurisdiction to the exclusion of any other court in civil causes or matters of “*admiralty jurisdiction, including shipping and navigation on the River Niger or River Benue and their affluents and on such inland waterway as may be designated by any enactment to be an international waterway...*” but this jurisdiction is in addition to such other jurisdiction as may be conferred upon the Court by an Act of the National Assembly⁶⁰. Currently, a ship or other property can only be arrested at any place within the limits of the territorial waters of Nigeria⁶¹, that is to say, 12 nautical miles measured from the low water mark. It is my humble submission that from the wording of Section 7(2) of the Admiralty Jurisdiction Act, an order for the arrest of a vessel in a properly made out action *in rem* can be made against a vessel that is outside the limits of the territorial waters of Nigeria (especially in anticipation of its arrival within the said territorial waters), but the vessel cannot be arrested outside the territorial waters. The Act gives jurisdiction over the matters and offences contained in it on the Federal High Court.⁶² By so doing, the Act which

⁵⁷ See sections 16(1)(e), (f) and 16(3) of the Act.

⁵⁸ See section 24(6) of the Act.

⁵⁹ The PANLIBHON States of Panama, Liberia, Honduras and Costa Rica and Uruguay are known for their open registries or granting flags of convenience.

⁶⁰ Section 251(1)(g) of the 1999 Constitution.

⁶¹ See section 7(2) of the Admiralty Jurisdiction Act.

⁶² Section 42 of the Act.

deals with matters involving carriage within 200 nautical miles from the low water mark of Nigeria, is intended to extend the territorial jurisdiction of the Federal High Court.

2.11 Creation of a 2nd Register.

Under the Merchant Shipping Act, there is only one register of ships in which ships eligible for registration are registered because they are owned by Commonwealth citizens or companies subject to laws of a Commonwealth country⁶³ A second and separate Register called Special Register for Vessels and Shipping Companies engaged in Cabotage Trade⁶⁴, is to be opened for the registration of all vessels including bareboat-chartered vessels⁶⁵ desiring to participate in cabotage. The separate register is to be maintained in the office of the Registrar of Ships for the purpose of enforcing the Act.⁶⁶ By the above provisions, the Act intends to affect the local shipping industry by causing Nigerian shipping companies to register their vessels as Nigerian vessels first under the Merchant Shipping Act and then should they want the vessels to partake in cabotage trade, to register them in the special Cabotage Register and for the first time in Nigeria, to allow the registration of bareboat-chartered vessels for use in cabotage trade. Furthermore, participation in cabotage thus gives an incentive to investors and ship operators to register in Nigeria, their vessels which they would have registered outside Nigeria.

2.12 Employment Opportunities.

The building and maintenance of more modern coastal vessels for transportation of cargo and passengers will induce the need to employ more Nigerian seafarers/seamen, masters, ratings, pilots, salvors, engineers, managers etc to cope with the high demands of ships' master and crew and also the employment of more Nigerian workers to cope with shipbuilding and repairs and ship maintenance which would meet high international standards

2.13 Education and Training of Seafarers

Cabotage provides national education and training opportunities for seafarers at home which can make both the nation and Nigerian seafarers to avoid having to depend on training policies of foreign shipowners and manning agents. Such competency-based education and training is also advantageous in that whilst meeting international standards of competency and safety, it can be tailored to meet our local circumstances and maritime needs in our inland waterways and domestic ports bearing in mind crew members' standard certification under the relevant Standards Training and Certification of Seafarers and Watchkeepers Convention on certification of seafarers. The Maritime Academy of Nigeria, Oron and the Nigerian Institute of Transport Technology, Lagos and other maritime institutions will be useful in the training of the workers required in domestic shipping. The job opportunities opened to masters and crew and engineers because of Nigerian cabotage law/policy-induced higher tonnage, will require education and training of Nigerian seafarers to man, operate and handle.

⁶³ Section 290 of Merchant Shipping Act cap. 224 of 1990 LFN.

⁶⁴ Section 23(1) of the Act.

⁶⁵ Section 23(4) of the Act.

⁶⁶ Section 30 of the Act.

The building and maintenance of more modern coastal vessels for transportation of cargo and passengers will induce the need to employ more Nigerian seafarers/seamen, masters, ratings, pilots, salvors, engineers, managers etc to cope with the high demands of ships' master and crew and also the employment of more Nigerian workers to cope with shipbuilding and repairs and ship maintenance which would meet high international standards

As a cargo shipping as opposed to a shipowning nation whose national fleet and experienced seafarers have seriously depleted in recent times, and which is interested in developing its coastal and inland waterways trade and its maritime industry in general, a cabotage law for Nigeria will be of advantage to it in a number of ways some of which are stated hereunder.

The report also revealed that the Registrar of Ships is under-funded and as such data on registered vessels are still being manually kept [since there are no computers for storage] with the attendant difficulties and delays in retrievals and security.

1. Modern Development and Growth of domestic waterborne transportation.

Since cabotage law/policy will cause all cargoes and persons to be transported between a country's ports and inland water ways by ships and ferries built/owned, crewed and operated by the nationals of the country, if Nigerian cabotage laws are promulgated, there will spring up and be developed a modern, safe, reliable and efficient domestic waterborne transportation to cope with the needs of shippers and passengers and shipowners in coastal and inland waterways transportation. A safe, reliable and efficient marine transportation of cargo and persons is vital to the sustenance of the growth of any economy and its international trade. As the domestic rail, air and road transport are being developed, so also will a Nigerian cabotage law hasten and facilitate the development of

Nigerian domestic shipping will grow through developments of its inland waterways by dredging coastal waterways and silted channels of about 3,000 kilometres of inland waterways under the control of National Inland Waterways Authority. The Onitsha River port in respect of which consultancy work has been completed, will be rehabilitated and the plan of developing the Oguta Lake River port the Ikom River Port, Cross River State ports at Baro, Idah and Lokoja for loading and unloading cargo and passengers will be implemented. This will enhance national economic strength through the contribution of domestic shipping to gross domestic product and well being.

Moreover, a developed, safe, reliable and efficient domestic marine transportation of cargo and persons will relieve other modes of transportation (rail, road, and air) of a lot of pressure in the movement of cargo including oil (wet), sugar, cement, fertilizers, or heavy equipment (bulk). Nigerian-flagged container feeder services can be used to support a hub-and-spoke transportation system for foreign trade and will provide a safe, cost-efficient and reliable option for Nigerian shipments. Reliable ferry services from Festac or Apapa to CMS in Lagos and also in the riverine areas of the Niger Delta, will not only reduce road congestion during peak working hours in Lagos but will also reduce the man-hours wasted on traffic-congested road transportation. The present terrible and annoying traffic-jams in Apapa, Lagos occasioned by trailers carrying containers from the Apapa

and Tin Can Island ports in Lagos and slowing down the economic activities in Lagos State in particular would not have arisen or would have been drastically reduced or eliminated if there were an alternative carriage of the Mid-West-bound or South-East-bound or South-South-bound or Northern-bound cargo by safe, efficient, reliable inland waterways and coastal shipping [which a cabotage law would have facilitated], to Warri, Sapele, Onitsha Lokoja, Baro and Onne ports from Apapa and Tin Can Island ports. Developed and reliable cabotage is therefore important to the economy in this regard.

5. Development and growth of domestic maritime infrastructure.

The necessary maritime infrastructure and inter-modal connections capable of handling the coastal and inland waterways commerce that will be built for the use of Nigerian-owned or Nigerian-built ships operated by Nigerian shipping companies and citizens, will further develop domestic maritime infrastructure. There will be induced improvement and expansion of cargo and modern container handling facilities, additional shore-sides and land-side capacities, terminals, berths, quays and additional foreshore cranes to enhance and expand ports handling capacity and capability for loading and unloading cargo on-board coastal ships as a result of the expected boom in coastal shipping due to Nigerian cabotage laws. It will also induce the dredging of inland waterways, rehabilitation and developments of ports and river ports e.g. Onitsha inland port on the River Niger Lokoja, Baro and Oguta Lake river port. More patrol boats will be acquired for monitoring out-board engine operators and overloading of ferries in order to ensure safety of lives and cargo and crime-prevention on the inland waterways and coasts.

For safe coastal shipping and quick search and rescue responses during distress and quick communications between the harbours, ports and ships on the coasts, modern maritime information and radio communication and radar systems will have to be either acquired or upgraded. The growth of maritime infrastructure triggered off by cabotage legal regime will also bring about a developed connection of coastal and inland shipping with other modes of transport [especially road and rail] in order to ensure effective and efficient door-to-door transportation of cargo. This resulting growth will also enable the sustenance of maritime infrastructure which is a key sector of the economy and which is essential to its function.

6. Creation of Employment.

Two common elements of cabotage laws that will come into play in Nigerian cabotage law and impact on employment, are that the ships would be Nigerian – built or Nigerian-owned, and Nigerian-crewed and operated. The building and maintenance of more modern coastal vessels for transportation of cargo and passengers will induce the need to employ more Nigerian seafarers/seamen, masters, engineers etc to cope with the high demands of ships' crew and bring about the employment of more Nigerian workers to cope with shipbuilding and repairs and ship maintenance which would meet high international standards. The workers will be exposed to modern ship building and ship repairs technology.

The fact that the ships must be Nigerian-crewed will also create employment opportunities for Nigerian seafarers to run and man the ships and for cadets to obtain sea-time experience. This will enhance the training and accumulated experience of Nigerian seafarers.

The International Transportation Workers Federation [ITF] supports cabotage laws as a means of a nation's securing a long-term, sustainable and fair distribution of employment for seafarers and as a valid method of eliminating unfair competition in what is essentially, a domestic transport service along the same line as road, rail or air transport. Consequently, in its report⁶⁷ the [ITF] stated inter alia that:

"111. In many countries where the national fleet has virtually disappeared, the introduction of cabotage arrangement represents the main, and sometimes the only, serious possibility remaining for local seafarers to secure employment.

112. In the main labour supply countries, the bulk of seagoing personnel are employed on board foreign flag vessels and to these countries the need for cabotage might, at first sight, not be obvious, although even here it can have significant advantages:

- . Cabotage provides national training possibilities which can avoid seafarers having to rely on the training policies of foreign owners and/or manning agents;
- . Cabotage also provides jobs for seafarers who, for various reasons (age, family etc), need to work closer to home; and
- . Cabotage retains an employment base not dependent on the whim of employers in the international shipping industry who may decide to change crew nationality with little notice."

The underlining is by me for emphasis because Nigeria happens to be one of those countries whose national fleet have virtually disappeared and whose seafarers would benefit from cabotage laws. In the US for instance, the domestic merchant fleet creates 87% of the entire seafarers employment and touches the US economy in every US region. Nigerian cabotage laws can similarly impact its economy.

Moreover, more Nigerians will become employed in jobs that are directly related to the domestic shipping industry in order to provide materials required in the dockyards and shipyards and supply the needs of the shipbuilding and maintenance industry. The Third World low-paid foreign crew will also be prevented from depriving Nigerian seafarers of job opportunities in domestic shipping. With more job opportunities for Nigerians, social unrest and vices including crimes especially in the Niger Delta area, will reduce.

3 Competition on a level-playing field.

Since Nigerian Cabotage law will bring about the reservation of Nigerian domestic waterborne trade (coastal and inland waterways) for Nigerian-owned/built, crewed and operated ships, all the participants in such trade will be subject to the same laws and rules especially in the areas of taxation, labour and seamen minimum wages, safety and environmental protection laws. Where government subsidies and incentives are available, the operators and ship owners will all have equal access to and use same. This will eliminate the present unfair competition between the highly subsidized foreign ships, [some of which are involved in their cartel liner shipping and alliances with larger ships], which are not subject to Federal and State Governments' taxes whilst within Nigerian ports and backed by sometimes better expertise, experience and managerial skills, manned by low-paid foreign crews from South East Asian or West African countries; and Nigerian coastal ships some of which lack such expertise, experience and managerial

⁶⁷ ITF Maritime Department: Policies: "From Oslo to Delhi Document, 1998 Chapter Five, Cabotage and Regional Standards".

skills and are subject to such taxes and presently lack any government subsidies or incentives or favourable ship acquisition loans.

So, by ensuring that all shipping companies operating in the domestic transportation field compete under similar constraints and benefits and responsibilities to their workers, regulatory bodies and the nation, a Nigerian cabotage law will put in place a level-playing field for domestic shipping operators. This produces a fair competition. Shippers will have more options and compare freight rates and can dump expensive and inefficient and slow coastal operators for the fast and efficient ones. The shipping companies with better and efficient services will have the highest patronage. Increased and increasing indigenous capacities lead to lower freight rates which in turn bring about increasing shipping capacity in order to bring down unit costs.

The fair competition (which cannot exist where there is participation by highly-subsidized foreign vessels exempted from certain local taxes and regulators), will force the crews and shipping companies to improve their productivity and services and become more efficient and effective especially in cargo handling capability and crew member productivity, the benefits of which will be delivered to the Nigerian coastal shipper or passenger. The increased productivity that adds to the gross national domestic product is good for the economy and will increase the domestic fleet. It also facilitates investment in ship building and acquisition and operation because cabotage trade will reasonably assure an intending shipowner/operator or investor in a Nigerian-built/owned ship that there will be stability since no investor in the highly capital intensive shipping industry will be ready or attracted to invest in it if within a short time thereafter he will be forced to compete in the coastal trade with the lower-cost and/or highly subsidized foreign vessels. The ITF supports cabotage laws as a good way of removing unfair competition in a domestic transport service.

CONCLUSION.

In conclusion, in highlighting the advantages Nigeria stands to gain from cabotage law, it is necessary to refer to the statement recently made by Clyde J. Hart Jr., US Maritime Administrator to the students at the US Merchant Marine Academy (Kings Point) on the Jones Act, namely:

“The Jones Act has been a cornerstone of US Maritime Policy in every Administration since its passage 80 years ago. In the first days of the new century, it remains relevant for America’s economic health and for national security. Yet critics continue to doubt its necessity and fairness. The most important and let me add, legitimate, question one can ask about cabotage laws is, ‘Are they necessary?’ And secondly, because that is important to Americans as people: “Are these laws fair?”

The ‘why’ question has a very simple answer. Cabotage laws are critical to every maritime nation’s security interest. More than 40 nations - including all G-8 members – agree that ‘free markets’ are bedrock ideas but secondary to the welfare of their citizens”

Fairness? Who really believes that if Jones Act were repealed the market place would provide affordable services or non-profitable routes? Domestic trade operators furnish

reliable, efficient water transport to distant US offshore areas with limited market size, seasonal demand and generally one-way trade”.

Moreover, the 105th US Congress adjourned in October, 1998 after giving strong support to the Jones Act by the House Concurrent Resolution 65. Although the Senate and House Committees and sub-committees held hearings and there were hot debates on bills that would have weakened or abolished the US Cabotage laws, after oral and written testimonies from the Maritime Cabotage Task Force, no law was passed out of the committee stage relaxing the US cabotage laws. A vote of confidence was thus given to US strict cabotage laws.

From the forgoing therefore, it is only wise and appropriate for Nigeria that if the US which is in the forefront of globalization, deregulation, trade liberalization, [free-marketism] anti-trust/competition, does not see anything wrong in the local shipping protective tendencies of its Jones Act-cabotage laws, a cabotage law is necessary for Nigeria so that it can also start enjoying the benefits the US had been deriving from it since over 80 years ago. A true Nigerian cabotage legislation is long overdue especially since none of its maritime legislations can be said to have adequately provided for a strict or controlled cabotage principle! Other developing countries have also over the years promulgated their cabotage laws. Nigeria should not therefore be an exception.

However, there are complaints by Malaysian Shipowners Association [MASA] of circumvention and manipulation of the cabotage system by Malaysian shippers especially in respect of oil and chemical carriages where there are insufficient Malaysian-registered tankers, by falsely misleading the DSLB and by acting as “fronts” for foreigners.

From the foregoing, there is no doubt in my heart that the Act has hit the local maritime industry with such a bang that it can never remain the same again, if its provisions are properly implemented and monitored with the necessary political will.

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2.0 . The seafarers will enhance their exposure and experience in shipping and training whilst the workers in shipyards will be exposed to modern ship building and ship repairs technology. The fact that the ships must be Nigerian-crewed will also create employment opportunities for Nigerian seafarers to run and man the ships. This will enhance the training and accumulated experience of Nigerian seafarers and bridge the gap between the old experienced Nigerian seafarers who are fast reducing in number and aging, and the young inexperienced ones who are roaming the streets without employment and experience. The situation will also be facilitated by the recent “White Listing” of Nigeria by the IMO under the STCW 1978/95.

3.0 Moreover, maritime and transport training schools will have to be upgraded and equipped with adequate educational and training facilities and modern courses in order to properly train and expose the seafarers in line with STCW 78/95 needed to man and run the increased national tonnage and Nigerian shipowners and shipping companies will be willing to invest more in shipping knowing fully well that the Nigerian seafarers to be employed to run and operate the vessels [since cabotage insists on the vessels been manned and operated by the nationals only], are readily available. Cabotage principle has been found to provide national training opportunities for seafarers at home and can therefore make both the nation and Nigerian seafarers avoid having to depend on training policies of foreign shipowners and manning agents. Such training is also advantageous in that whilst meeting international standards of competency, it can be tailored to meet our local circumstances and maritime needs in our inland waterways and domestic ports bearing in mind crew members’ standard certification under the relevant Convention on certification of seafarers. The Maritime Academy of Nigeria, Oron and the Nigerian Institute of Transport Technology, Lagos and other maritime institutions will be useful in the training of the seafarers and workers required in domestic shipping. This will fall in line with the International Transportation Workers Federation [ITF] support for cabotage laws as a means of a nation’s securing a long-term, sustainable and fair distribution of employment for seafarers and as a valid method of eliminating unfair competition in what is essentially, a domestic transport service along the same line as road, rail or air transport.