

AN APPRAISAL OF THE COASTAL AND INLAND SHIPPING ACT, 2003

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Abstract

Shipping is very essential to the economic development of every country with inland waters. Countries with seafaring history establish cabotage laws which applies to merchant ships in order to protect its domestic shipping industry and restrict foreign vessels participation or competition in domestic coastal trade. Cabotage policy is considered as a protectionist policy used to safeguard the indigenous shipping industry against unfavourable competition with foreign companies especially on the carriage of cargoes within the country enacting the policy. These countries adopt either strict or liberalized cabotage regime in order to achieve the above. Due to the effect of cabotage policy in maritime trade and the critical role the coastwise and inland waterway transportation play in a nation's economy, Nigeria enacted the coastal and inland shipping (Cabotage) Act 2003 with the objectives to restrict the use of foreign vessels in the domestic coastal trade; promote the development of indigenous tonnage and establish a cabotage vessel financing fund. This paper discussed the concept of cabotage, the historical background of cabotage, the cabotage regime, the Cabotage Act, the Institutional body responsible for the implement of the Cabotage Act in Nigeria and the effect of the Cabotage Act on Nigeria economy. The paper adopted the doctrinal methodology and found that cabotage policy is important and should be implemented in every country that wants to encourage indigenous shipping participation in her indigenous shipping industry.

Keywords: Cabotage, Territorial Waters, Shipping

1.0 Introduction

Shipping is one of those vital economic areas whose indigenous control or lack of it may make or mar the fortunes of a country's socio-political independence. To this effect maritime nations make laws that promote and protect their domestic shipping industries from foreign participation and monopoly. The right of nations to exclude foreign vessels from their local/domestic maritime trades is widely accepted without qualifications in the international community: and most coastal States have adopted cabotage laws just to enforce that right.¹ It is a widely known fact that a strong maritime industry represents a nation's foundation for both economic and even military security.² In Nigeria, maritime transport has played a vital role "in the economic development of the nation through the lubrication of import and export trade, and facilitation of exploration and exploitation of natural resources located offshore."³

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¹ R L McGeorge, 'United States Coastwise Trading Restriction: A Comparison of Recent Customs Service Rulings with the Legislative Purpose of the Jones Act and the Demands of the Global Economy' [1990] Vol.11, *North-western Journal of International Law & Business*.62-63.

² Andrew Obinna Onyearu, 'Cabotage in Nigeria and the Waiver Clauses: A Critical Appraisal of Control Options'. <http://www.andrewsolicitors.com/html/News/cabotage>. accessed on 20/5/2025.

³ Theophilus Nwokedi and Chinemerem C. Igboanusi, 'Cabotage Implementation in Nigeria: Analysis for Improving Coastal Shipping Business Opportunities for Local and Joint Venture Operators', [2015] 3 (1) *Research Journal's Journal of Management*, 1, 2.

The term “Cabotage” is derived from the French word “**Caboter**” which means to sail coastwise or by the capes. The Black’s Law Dictionary (10th Edition) defined Cabotage as (a) the carrying on of trade along a country’s coast; the transport of goods or passengers from one port or place to another in the same country. The privilege to carry on this trade is usually limited to vessels flying the flag of that country. (b) The privilege of carrying traffic between two ports in the same country. (c) The right of a foreign airline to carry passengers and cargo between airports in the same country. Cabotage refers to the exclusive reservation of maritime traffic (coastal and inland waters) operations within a country’s territory.⁴ Cabotage simply means the act of a state having an exclusive control in the commercial operations between ports and limiting the shipping activities to only their own national flag vessels without any foreign interference and participation. Cabotage is intended to ensure the participation of citizens in a country’s domestic trade and raise the development of merchant marines in the local industry. It also connotes the preservation of domestically owned shipping infrastructure for national security purposes and to ensure safety in congested territorial waters.

Originally, cabotage was concerned with shipping along coastal routes, from one port to another of a country’s territorial waters but now the application has been broadened to include aviation, railways and road transport as well; For the purpose of this paper, the definition of cabotage will be restricted to maritime transport of goods and services within a State’s coastal territory. Cabotage is also the exclusive reservation of the coasting trade of a nation to ships operating under the flag of that country.⁵

Nations with seafaring history in the bid to protect their domestic trade and commerce from undue foreign competition use the concept of cabotage to achieve this aim by enacting cabotage laws in place which requires ships engaged in coastal transport in their jurisdiction not only to be acquired, preserved or nationally built but also to be owned and operated by their nationals.⁶ In maritime law context, the cabotage principle is one which allows a country to make its laws pertaining to the navigation and operation of vessels within its coastal territories and territorial waters.⁷ These cabotage laws refers to the set of procedures and guidelines enacted to govern coastal shipping within the jurisdiction of that country. Nigeria in a bid to protect her citizens and to develop the domestic shipping through empowering indigenous participation enacted the Coastal and Inland Shipping (Cabotage) Act in 2003 which restricts the participation in the shipping industry to the citizens through restrictive/protectionist policy. Accordingly, it is apt to argue that the cabotage regime introduces a platform where Nigerians could actively participate in the thriving petroleum sector, the bastion of the country’s economy.⁸

⁴. Firdaus Suffian and others, ‘Policy Fiasco: The Sabotage of Cabotage Policy Mayasia’ [2013] 2 (6) *International Journal of Social Science and Humanity*. <<http://doi.org/20.7763/IJSSH.2013.V3.294>, 514> accessed 2 July 2025

⁵. Peter Brodie, ‘Dictionary of Shipping Terms’ 2nd Edition 27; Mike Igbokwe, “The Nigeria Maritime Cabotage Policy & Law: The Case and Advocacy” [2006] 273.

⁶. For example, United State of America, Malaysia, India, Nigeria etc.

⁷. Savage-Oyekunle Oluremi, ‘The Effect of the Cabotage Act 2003 on the Nigerian Maritime Industry’, [2017], *Rethinking the Administration of Justice*. 4-5.

⁸. Kalu Kingsley Anele, ‘A Study of the Cabotage Policy in Nigeria from the Prisms of Ship Acquisition and Shipbuilding’ [2018] Vol 17 (1) *WMU Journal of Maritime Affairs*. ISSN 1651-436X. 92.

2.0 Conceptual Analysis

Territorial Waters

Cabotage law is only applicable or implemented by a state within its territorial waters. These territorial waters are area of water over which a state has jurisdiction which includes the internal waters, the territorial sea, the contiguous sea, the exclusive economic zone and the continental shelf. The internal waters are considered as waters on the landward side of the baseline belong to the state's internal waters. They form part of the national territory of the coastal state, which has complete jurisdiction over them. In some cases, however, it is not the low-water line which delimits the internal waters; this applies in cases where straight baselines or closing lines across a bay are drawn.

The law of the sea permits this approach if the coast is characterized by deep indentations and inlets (as in Norway), if a chain of islands stretches along and immediately adjacent to the coast (as with the North Frisian Islands) or if the coast has a bay. For example, the Wadden Sea, to the extent that it lies landwards of the outermost points of the North Frisian Islands, is just as much part of Germany's internal waters as the ports of Kiel, Hamburg and Bremen⁹. The states exercise absolute sovereignty in internal waters and do not permit innocent passage of foreign vessels.

The Territorial Sea is defined as a belt of coastal waters extending at most 12 nautical miles from the baseline by the definition given by the 1982 United Nations Convention on the Law of the Sea. Here innocent passage of foreign vessel is allowed. The contiguous zone extends up to 24 nautical miles from the baseline within which states can exert limited control for the purpose of preventing or punishing infringement of its customs, fiscal, immigration or sanitary laws and regulations within its territory or territorial sea. The exclusive economic zone extends to maximum of 200 nautical miles from the baseline. States enjoy control of all economic resources within its exclusive economic zone including fishing, mining, oil exploitation and any pollution of those resources.

3.0 Historical background of Cabotage Law

The first formal enactment on cabotage is the American Merchant Act of 1920 also known as The Jones Act or the Merchant Marine Act. The Act became effective on 5th June, 1920 and it repealed the Emergency Shipping Act 1917; Rate Emergency Act, 1918 and Shipping Act, 1916.

The Act was enacted in order to stimulate the shipping industry in the wake of the World War I. The requirement about shipping cargo between American ports only on American ships benefitted the constituents of Wesley Jones, the U.S Senator from the state of Washington who introduced the Act. The Jones Act was designed to give the state a monopoly on shipping to Alaska, Puerto Rico, Hawaii and Guam. This Act provides for the promotion, maintenance of the American merchant marine, to repeal certain emergency legislation, and provide for the deposition, regulation and use of property acquired thereunder and for other purposes. Section 27 of the Act provides for cabotage and mandates that all goods transported by water between United States ports be carried on United States-flag ships,

⁹ World Ocean Review, Clear Rules, Clear Limits; <<https://worldoceanreview.com/en/wor-1/law-of-thesea/a-constitution-for-the-seas/2/>> accessed on June 17, 2025.

constructed in the United States, owned by United States citizens and crewed by United States citizens and United States permanent residents.

On several occasions the U.S government has granted temporary waivers on Jones Act requirements and this is done in the wake of a natural disaster such as hurricane in order to increase the number of ships that can legally supply goods to an affected area¹⁰. It will be safe to say at this point that waiver is not granted except when there's a national emergencies or upon the request of the Secretary of Defence. The Jones Act is considered as a piece of protectionist legislation that considerably increases the cost of shipping goods between two U.S ports.¹¹ Generally, the Jones Act prohibits any foreign-built, foreign-owned or foreign-flagged from engaging in coastwise trade within the United States. After the enactment of the Jones Act, countries started making similar laws to safeguard their domestic coastal trades from foreign participation¹².

4.0 Cabotage Regime

Cabotage is a vital protectionist policy employed by various States in the protection of their domestic fleet in the carriage of cargoes within their coastal waters.¹³ This is because cabotage protects a state's national maritime industries development from foreign-flagged vessels. The right of nations to exclude foreign vessels from their local/domestic maritime trades is widely accepted without qualifications in the international community: and most coastal States have adopted cabotage laws just to enforce that right.¹⁴ Cabotage objectives include: maintain national security; promote fair competition; develop human capacity; create jobs promote ship ownership; increase safety and security of ships in port; enhance marine environmental protection; and preserve maritime knowledge and technology.¹⁵

There are basically two types of cabotage regimes adopted by nation with seafaring history. The adoption and application of any of these types of cabotage regimes is determined by the national, economic, shipping interests, socio-political reasons and any other local conditions prevalent in a nation.¹⁶

A. The Strict Cabotage Regime.

This type of cabotage regime restricts completely the presence of foreign vessels and personnel. Here only ships built, owned, crewed and operated by citizens of the country are allowed in participate in the domestic coastal trades. The object of the strict cabotage policy is to totally exclusive foreign-built, foreign-owned, foreign-crewed and operated vessels from participating

¹⁰ Will Kenton, 'The Jones Act' [2019] www.investopedia.com/terms/j/jonesact.asap assessed on 12 June 2025.

¹¹ Ibid.

¹² Countries like Australia, Canada, Russia, Chile, Mexico, Brazil, China, Nigeria etc.

¹³ G. Babatunde, 'The Effects of Cabotage Regime on Indigenous Shipping in Nigeria' [2011] *World Maritime University Dissertations*, 6.

¹⁴ R L McGeorge, 'United States Coastwise Trading Restriction: A Comparison of Recent Customs Service Rulings with the Legislative Purpose of the Jones Act and the Demands of the Global Economy' [1990] Vol.11, *North-western Journal of International Law & Business*.62-63.

¹⁵ A Comprehensive Worldwide study finds domestic Maritime Cabotage Law are CommonPlace Among UN Member State [2018] *American Maritime Partnership* <www.americanmaritimepartnership.com/studies/world-cabotages-study/> accessed on 12 June 2025.

¹⁶ Savage-Oyekunle Oluremi, 'The Effect of the Cabotage Act 2003 on the Nigerian Maritime Industry', [2017], *Rethinking the Administration of Justice*. 4-5.

in a country's domestic shipping industry¹⁷. Example of countries practicing this regime are Nigeria, Greece and the United State of America¹⁸. It has been argued by many authors that this regime does no good to the national economy of the country that adopts this regime. For instance the American cabotage policy under the Jones Act which requires and emphasises that for ships to engage in cabotage in American coast they must be built, owned, crewed, and registered in the United States bears much less meaning in American economy today in the face of globalization, extensive offshore outsourcing and the steady rise of flags of convenience which implies that the Act deprives users of domestic routes from access to the lower-cost foreign-flag vessels that now dominate world shipping industry.¹⁹

B. Relaxed or Liberalized Cabotage Regime.

This is seen where the cabotage law of a country allows some measure of participation to foreign-built, foreign-owned, foreign-crewed and operated vessels in the country's coastal trading. Countries like China, Korean, India, Brazil, New Zealand, Australia and Malaysia practise this type of cabotage regime with the objective to accommodate foreign involvement in their coastal trade. For instance China's ease of its cabotage regulations in 2003 to allow foreign lines to ship empty containers between ports in its coast²⁰, the amendments in the cabotage law only applied to shipping companies of countries that have signed relevant bilateral agreements with China²¹. In Brazil, foreigners enjoy rights of cabotage in Brazilian ports if it is a matter of public interest, or the foreign vessel is being chartered as a substitute for a vessel owned by the Brazilian shipping company under construction at a Brazilian shipyard²².

Note that Cabotage impacts positively on a nation's economy through revenue generalization and the conversation of foreign currency, which helps in the expansion of a nation's fleet; increase in tonnage capacities; creation of employment opportunities for citizens, creating an enabling environment for the formation of joint ventures between Nigeria and foreigners which also leads to the exposure of the local shipping industry to the technicalities of the business.²³

Hence, the type of maritime cabotage law promulgated by each country is dependent upon the economic strategic interest which the government wishes to adapt in protecting the domestic shipping industry from foreign competition.²⁴

¹⁷ Ibid.

¹⁸ Section 3 of the Cabotage Act provides for the restriction of foreign vessels, while Section 27 of the Jones Act likewise provides for similar prohibition of foreign flagged vessels.

¹⁹ T. Grennes, 'An Economic Analysis of the Jones Act' [2017] *Mercatus Research, Mercatus Center at George Mason University*. 45.

²⁰ Ferdinand Agama and Henry Alisigwe, 'Cabotage Regime and their effects on State Economy' [2018] *NAUJILJ* 9(1).

²¹ D Anderson and J Monteiro, 'Domestic Water Transportation before and after Deregulation' [2010] 6 <Ctf.Ca/Wp.../07/34andersonmonteirodomesticwatertransportation.Pdf>. accessed on 20 May 2025.

²² G. Babatunde, 'The Effects of Cabotage Regime on Indigenous Shipping in Nigeria' [2011] *World Maritime University Dissertations*, 6.

²³ Ibid.

²⁴ Savage-Oyekunle Oluremi, 'The Effect of the Cabotage Act 2003 on the Nigerian Maritime Industry', [2017], *Rethinking the Administration of Justice*. 4-5.



5.0 Cabotage Policy in Nigeria

Maritime trade in Nigeria from colonial times was dominated by Elder Dempster line of Great Britain. Nigeria was seen at that time as a potential leading maritime nation in West Africa.²⁵ In 1958, Elder Dempster in conjunction with another British line called Palm line, helped Nigeria to form its first national carrier known as the National Shipping Line (NSL) with Nigerian government having 51% of its shares while the other two companies (Elder Dempster and Palm Line) had 33% and 15% shares respectively. The NNSL when formed had two million pounds shares and it was agreed that the two companies would assist in the training of Nigerians in all aspects of the shipping business.²⁶

This NSL later became The Nigeria National Shipping Line (NNSL) in 1962 when the shares of both foreign lines were bought over by the Nigerian government.²⁷ That same 1962, the Merchant Shipping Act was promulgated which made it Nigeria's first legislation regulating the Coastal and Inland water trade in Nigeria. This Merchant Shipping Act of 1962 has been amended by the Merchant Shipping Act (Amendment) Act 2007.²⁸ It is necessary to state that as at 1979, the Nigerian National Shipping Line owned 24 vessels out of which nineteen were newly built.²⁹ The Nigerian National Shipping Line was liquidated in 1995 and replaced with the National Unity Line (NUL) which also faced challenged up to the point that the only vessel NUL had, the MV Abuja was auctioned off in 2003 at a price that was far less than the amount with which it was acquired.³⁰

Nigeria adopted the UNCTAD³¹ Linear Code of Conduct for linear conferences also known as the UNCTAD 40:40:20 in 1974 and domesticated it in 1987. The essence of this code was to assist developing countries in the development of their indigenous shipping companies. It was used for the sharing of maritime cargo between indigenous carriers and foreigners and under this code, the two trading states i.e. the cargo originating state and the receiving state had the right to reserve for their national shipping lines, the right to carry up to 40% each of intended linear cargo while the remaining 20% was left for third party countries to carry³².

In 1987, the administration of General Ibrahim Babangida enacted the National Shipping Policy Decree No.10³³, which gave rise to the defunct National Maritime Authority (NMA), the precursor agency to the Nigerian Maritime Administration and Safety Agency (NIMASA), the agency now implementing the cabotage law³⁴. The National Shipping Policy Act under section 18(3) developed the Cargo Allocation System which the National Maritime Authority implemented weekly to indigenous shipping

²⁵ Augustine Nweze, 'The Nigeria Maritime Cabotage Act on Entrepreneurial Opportunities and Nigeria's Economic Growth'. www.stclements.edu.ng/grad/gradnwez.htm accessed on 20 May 2025.

²⁶ Mike Igbokwe, 'The Nigeria Maritime Cabotage Policy & Law: The Case and Advocacy,' [2006], 355.

²⁷ Edmund Chilaka and E.E.Ege 'The Nigerian Cabotage Law and the Development of Indigenous Maritime Capacity'. www.s3.amazonlaws.com accessed on 20 May 2025.

²⁸ Merchant Shipping Act, No.27 of 2007

²⁹ Savage-Oyekunle Oluremi, 'The Effect of the Cabotage Act 2003 on the Nigerian Maritime Industry', [2017], *Rethinking the Administration of Justice*.

³⁰ Mike Igbokwe, 'The Nigeria Maritime Cabotage Policy & Law: the Case and Advocacy,' [2006], 283.

³¹ The full meaning is the United Nations Conference on Trade and Development.

³² Savage-Oyekunle Oluremi, 'The Effect of the Cabotage Act 2003 on the Nigerian Maritime Industry', [2017], *Rethinking the Administration of Justice*.

³³ Now National Shipping Policy Act Cap. N75, Vol.11, LFN 2004.

³⁴ Edmund Chilaka and E.E.Ege 'The Nigerian Cabotage Law and the Development of Indigenous Maritime Capacity'. www.s3.amazonlaws.com accessed on 20 May 2025.

companies. Due to the challenges faced in the effective implementation of the cargo allocation policy, the Federation Government abolished the policy in 2000. This development coupled with other problems of local maritime industry gave rise to the dominance of foreign participation in the shipping trade hence there was an urgent need to redress the imbalance in the shipping, fast track development of indigenous shipping and participation.

The introduction of cabotage in Nigeria is to significantly utilise the legally entrenched and lucrative shipping opportunities as a result of the riparian nature of the country's geography, characterised by coastal and inland waterways³⁵. It was felt that a cabotage policy would help to develop the domestic maritime fleet; create employment opportunities for over 30,000 trained but unemployed seafarers; boost training requirements of the Maritime Academy; increase the currently optional exploitation of the under-utilised facilities at the Niger Dock; encourage the development of required infrastructure and technical knowhow in the land waterways and lead to a boom in transport and haulage businesses.³⁶ Cabotage policy in Nigeria introduces a market reservation in respect of the local carriage of goods, the coastal transport of men and materials, the supply of offshore vessels of differing operational and market role description, the supply of all manner of shipping services between all Nigerian coastwise and offshore locations for Nigerian operators.³⁷ Cabotage policy offers business opportunities in the following areas in the petroleum sector in Nigeria, drilling vessels, commercial cargo ships, integrated tug and barges, fishing vessels and fish processing vessels ore/bulk/oil carriers, tanker vessels, suction dredgers, semi submersibles, incinerator vessels, upper dredgers, tug boats, offshore supply boats, driving support ships and pilot boats.³⁸ Ruppel and Biam aptly summarised the aims of cabotage policies thus "...to restrict the majority of the national seaborne traffic to the national transport market, in order to avoid currency outflows, to secure income for the domestic fleet, to promote national shipyards and to retain sufficient transport capabilities in times of need".³⁹

6.0 The Coastal and Inland Shipping Act, 2003⁴⁰

The Cabotage Act was enacted in 2003 and it became operational in 2004. It is an Act to restrict the use of foreign vessels in domestic trade to promote the development of indigenous tonnage and to establish a Cabotage Vessel Financing Fund and for related matters.

Section 2 of the Act defined "coastal trade" or "cabotage" as

- a. The carriage of goods by vessel, or by vessel and any other mode of transport, from one place in Nigeria or above Nigeria waters to any other place in Nigeria or above Nigeria waters, either

³⁵ V.O.S. Okeke and E.T Aniche, 'An Evaluation of the Effectiveness of the Cabotage Act 2003 on Nigerian Maritime Administration', [2012] 2 (1) *Sacha Journal of Policy and Strategic Studies* 12,13.

³⁶ Andrew Obinna Onyearu, 'Cabotage in Nigeria and the Waiver Clauses: A Critical Appraisal of Control Options'. <http://www.andrewsolicitors.com/html/News/cabotage> accessed on 20 May 2025.

³⁷ Lazarus Okorogi and Wilfred I. Ukpere, 'A strategic Reposition of the Maritime Industry for Economic Recovery and Sustainability: The Cabotage Act.' [2011] 5 (14) *African Journal of Business Management*, 5658, 5658.

³⁸ William U. Agoha, 'The Impact of the Cabotage Act on Local Capacity Development: A Study of Selected Indigenous Shipping Companies.' A Thesis submitted to the Postgraduate School Federal University of Technology, Owerri, in partial fulfilment of the requirements for the award of the degree of (Master of Business Administration) MBA in Maritime Management Technology, November [2008] <<http://futoportal.silverdgeprojects.com/Research/FUTO/163.pdf>>.

³⁹ Oliver C. Ruppel and David J. Biam, "Taking back Theseas-Prospect for Africa's Blue Economy" ISS Paper 290, [February 2016], 3.

⁴⁰ Will be hereinafter be referred to as the Act.

- directly or via a place outside Nigeria and includes the carriage of goods in relation to the 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 Nigeria waters and, the carriage of any goods or substances whether or not of commercial value within the waters of Nigeria.

The purport of the Act is that all economic activities including carriage (whether of passengers or cargo) within Nigeria's coastal waters should be indigenised and reserved for Nigerians.⁴¹ Also, since most of the activities carried out in the sector relate to shipping services, it is implied that for Nigerians to participate in coastal trade, they must be registered and crewed by Nigerians⁴². The Act restricts the type of vessels that can engage in coastal trade in Nigeria to vessel which are wholly owned and wholly manned by Nigeria citizen⁴³ not only must the vessels be wholly owned and wholly manned by Nigerians. they must also be built and registered in Nigeria⁴⁴.

The Act is divided as follows:

Part I: This part is titled the short title and interpretation which can be seen in Section 1-2.

Part II: This part is titled the restriction of Vessels in domestic coastal trade and it contains Section 3-8.

Part III: This part is titled the waivers and it contains Section 9-14.

Part IV: This part is titled the licence to foreign vessel and it contains Section 15-20.

Part V: This part is titled registration and it contains Section 22-28.

Part VI: This part is titled enforcement and it contains Section 29-34.

Part VII: This part is titled offences and it contains Section 35- 41.

Part VIII: This part is titled cabotage vessels financing fund and it contains Section 42- 54.

Part VIX: This part is titled the miscellaneous and it covers Section 46-55.

Major sections will be discussed briefly in the line with the cabotage regime adopted by Nigeria:

Section 3 of the Act provides that “a vessel other than a vessel wholly owned and manned by a Nigeria citizen, built and registered in Nigeria shall not engage in the domestic coastal carriage of cargo and

⁴¹ Savage-Oyekunle Oluremi, ‘The Effect of the Cabotage Act 2003 on the Nigerian Maritime Industry’, [2017], *Rethinking the Administration of Justice*.

⁴² Augustine Nweze, ‘The Impact of Cabotage Act on Entrepreneurial Opportunities and Nigeria's Economic Growth’ <www.stclements.edu/grad/gradnwez.htm> accessed on 20 May 2025.

⁴³ K.G Kingston note on ‘the Transportation and Shipment of Crude Oil’. <www.katolawcentre.com> accessed 5 May 2025.

⁴⁴ K.G Kingston (n 43).

passengers within the coastal territorial inland waters, or any point within the waters of the Exclusive Economic Zone of Nigeria”. This section has made a lot of authors to argue that Nigeria operates a strict cabotage regime because of the express provision that only vessels wholly owned and manned by Nigeria citizens, built and registered in Nigeria will engage in the domestic coastal carriage of cargo and passenger within the coastal territorial inland waters.

Section 4 of the Act provides that “a tug or vessel not wholly owned by a person who is a Nigerian citizen shall not tow any vessel from or to any port or point in Nigerian Waters, or tow any vessel carrying any substance whatsoever, whether of value or not any dredge material whether or not it has commercial value from a port or point within Nigerian waters”. This section precludes a foreign vessel from towing any vessel within Nigerian Waters but the drafters were careful enough to insert an exception in line with Salvage Convention⁴⁵ which is that nothing in this Section shall preclude a foreign vessel from rendering assistance to persons, vessels or aircraft in danger or distress in Nigerian waters⁴⁶.

Section 6 of the Act provides that “a vessel of whatever type or size shall not engage in domestic trading in the inland waters of Nigeria except a vessel that is wholly owned by Nigerian citizen”. This provision is somehow a repetition of Section 3 but a bit broader in the sense that it provides that irrespective of the type and size of a vessel as long as it is not wholly owned by a Nigerian citizen, it cannot engage in domestic trading in the inland waters of Nigeria.

Section 8 provides for exceptions where a foreign vessel can be allowed in the inland waters of Nigeria. This is seen where the foreign vessel is:

1. Engaged in salvage operation is determined by the minister to be beyond the capacity of Nigerian owned and operated salvage vessels and companies.
2. Engaged with the approval of the minister or any other relevant government agency in activities related to a marine pollution emergency or to any threatened risk thereof.
3. Engaged in any ocean research activity commissioned by the Department of Fisheries or any other department of the government responsible for such research.
4. Operated or sponsored by a foreign government that has sought and received the consent of the Minister of Foreign affairs to conduct Marine Scientific Research.

Note that notwithstanding the provision of Section 8(1), the requirement for ministerial determination shall not apply to any vessel engaged in salvage operations for the purpose of rendering assistance to person vessels or aircraft in danger or distress in Nigeria waters⁴⁷.

Under **Sections 9- 11**, the Minister may on the receipt of an application grant a waiver to a duly registered vessel on the requirement for a vessel 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

⁴⁵ See Articles 10, 11 & 12 of the Salvage Convention and Article 18 & 21 of the United Nations Convention on Law of the Seas (UNCLOS).

⁴⁶ See Section 4(2) of the Act.

⁴⁷ See Section 8(2) of the Act.

service or perform. The waiver principle is based on either of three reasons i.e. non-availability, reciprocity or bilateral agreements.⁴⁸

The order for granting the waiver is provided for in Section 12 and it states that a shipping company and vessels owned by a joint venture arrangement between Nigerian citizens and non-Nigerian; the equity shareholding of the Nigeria(s) joint venture partner in the vessel and the shipping company shall not be less than 60 per centum; the percentage so determined to be held by Nigerian citizen(s) free from any trust or obligation in favour of non-Nigeria. The waiver granted by the Minister in compliance with the Act shall not exceed a period of One year and the waiver system may be reviewed after five (5) years from the commencement of the Act by the National Assembly.

Another important aspect that the Act provided for is the registration of vessels⁴⁹ which is mandatory for every vessel intended for use under the Act to be duly registered by the Registrar of Ships in the Ship Register for vessels and ship owning companies engaged in cabotage will have to meet all the requirements of the Act and Merchant Shipping Act.

According to the Act⁵⁰, the following vessels are eligible for registration passenger vessels, crew boats, fishing trawlers, barges, tugs, off-shore service vessels, anchor handling tugs and supply vessels, floating petroleum storage, dredgers, tankers, carriers, and any other craft or vessel for carriage on, through or underwater of persons, property or any substance whatsoever.

According to the guidelines⁵¹ issued by the Minister of Transport there are five categories of registration.

- A. Registration of Wholly Owned Nigerian Vessels: To qualify for registration in this category, the vessel's 64 shares must be wholly and beneficially owned by Nigerian citizens or by a company registered in Nigeria with 100% of its share capital wholly and beneficially owned by Nigerian citizens. All the shares in the vessel or in the company that owns the vessel must be held free from any trust or obligation in favour of any person who is not a citizen of Nigeria.
- B. Registration of Joint-Venture Owned Vessels: As the name implies, this category applies to the registration of vessels owned under a Joint-Venture arrangement between Nigerian citizens and non-Nigerians. It is required that the equity shareholding of the Nigerian partner(s) in the vessel and/or the shipping company must be at least 60% held free from any trust or obligation in favour of non-Nigerians.
- C. Registration of Bareboat Chartered Vessels to qualify for registration in this category, the bareboat chartered vessel is required to be under the full control and management of Nigerian citizens or a Company with 100% of its share capital wholly and beneficially owned by Nigerian citizens, free from any trust or obligation in favour of non-Nigerians.

⁴⁸ Mfon Ekong Usoro, 'Cabotage Policy & International Maritime Politics: The Nigeria Coastal and Inland Shipping (Cabotage) Act 2003. www.paulusoro.com/publication/cabotagepolicy. Accessed on 20 May 2025.

⁴⁹ See Section 22- 28 of the Act.

⁵⁰ See Section 22(5) of the Act.

⁵¹ See Section 27 of the Act.

- D. Registration of Foreign-Owned Vessels: To be eligible for registration in the Cabotage Register, foreign owned vessels are required to obtain a waiver and a licence for participation in coastal trade (cabotage) from the Minister of Transport.
- E. Temporary Registration of Cabotage Vessels: The Cabotage Act in Section 27 provides that foreign owned vessels presently engaged in cabotage trade, may be granted a temporary registration in the Cabotage Register for the duration of the contract for which the vessels are employed. However, as stipulated in the guidelines, where the period left to run on the contract exceeds one year from 1st May 2004, the foreign vessel will only be granted temporary registration for one year and not for the duration of the contract for which the vessel is employed.

Requirements for Registration:

The registration requirements for all the five categories are similar except that in the case of a Bareboat Chartered Vessel, a copy of the Bareboat Charter Agreement is required and in the case of a foreign owned vessel, a licence from the Federal Ministry of Transport is required prior to registration. The duly completed application form is required to be submitted to the Registrar of Ships with the applicant's corporate documents and the statutory certificates for the vessel as specified in the guidelines.

Duration of Registration:

The guidelines specify that the Cabotage Ship Registration Certificate for categories 1-4 shall be valid for a period of (5) years, subject to annual endorsement by the Registrar of Ships.

The documents required to be provided for the annual endorsement of the certificate by the Registrar of Ships are: (a) Evidence of payment of 2% surcharge (where applicable). (b) Copy of Joint Maritime Industrial Council ("JOMALIC") certificate and declaration of compliance with Seafarers' condition of employment.

It is important to note at this point that a vessel can be deleted from the registry where it is determined that a subsequent change in the ownership structure of the vessel or the owning company may have contravened the provisions of the Act or where the required certification and documentation has expired or it is no longer eligible for registration under the Shipping Act or under the Act⁵².

The Act also provided for what is known as the Cabotage Vessel Financing Fund⁵³, the purpose of the fund is to promote the development of indigenous ship acquisition capacity by providing financial assistance to Nigeria operators in the domestic coastal shipping. The Section further provides that a surcharge of 2 per centum of the contract sum performed by any vessel engaged in the coastal trade; a sum as shall from time to time be determined and approved by the National Assembly; monies generated under this Act including the tariffs, fines and fees for licences and waivers; such further sums accruable to the fund by way of interests paid on and repayment of the principal sums of any loan granted from the fund.

⁵² Section 25 of the Act.

⁵³ See Section 42 of the Act.



The National Maritime Authority is saddled with the responsibility of collecting and depositing the money generated in this fund in a commercial bank and administered under the guideline that shall be proposed by the Minister and approved by the National Assembly. The beneficiaries of the fund shall be Nigerian citizens and shipping companies wholly owned by Nigerians⁵⁴.

7.0 The Jurisdiction of the Federal High Court on Cabotage Related Matters

In *Madukolu v Nkendilim*⁵⁵ the Supreme Court defined jurisdiction to be the power of the court to inquire into facts, apply the law and make decisions and declare judgment.

The Federal High Court is the only court in Nigeria exclusively vested with the jurisdiction to hear and determine maritime claims and other admiralty causes or matters, whether civil or criminal⁵⁶. The scope of the admiralty jurisdiction of the Federal High Court was considered by the Supreme Court in many cases.⁵⁷ In recognition to the exclusive jurisdiction vested in the Federal High Court, the Cabotage Act in Section 41 provides that “Jurisdiction over the matters and offence referred to in this Act lie with the Federal High Court while Section 35-40 of the Act provides for penalties for contravention of any part of the Act.

8.0 The Institutional Framework

The Nigerian Maritime Administration and Safety Agency (then National Maritime Authority) is an agency of the Federal Ministry of Transport created on 1st August, 2006 from the merger of National Maritime Authority (NMA) and Joint Maritime Labour Industrial Council (JMLIC) to monitor, implement and enforce Cabotage Act 2003. For effective implementation of the Cabotage Act 2003, the NIMASA is divided into the following departments or units: The Register of Ships, Cabotage Enforcement Unit, Collecting Agency for Cabotage Vessel Fund and Seafarers Training and Certification Development.

Section 22 of The NIMASA Act, 2007 in Part IV, explicitly stipulated the functions and duties of the Agency as follows: (a). Pursue the development of shipping and regulate matters relating to merchant shipping and seafarers; (b). Administering the registration and licensing of ships; (c). Regulate and administer the certification of seafarers; (d). Establish maritime training and safety standards; (e). Regulate the safety of shipping as regards the construction of ships and navigation; (f). Provide search and rescue services; (g). Provide directions and ensure compliance with vessel security measures; (h). Carry out air and coastal surveillance; i. Control and prevent marine pollution; (j). Provide direction on qualification, certification, employment and welfare of maritime labour; (k) Develop and implement policies and programmes which will facilitate the growth of local capacity in ownership, manning and construction of ships and other maritime infrastructure; (l). Enforce and administer the provisions of the Cabotage Act 2003; (m). Perform port and flag state duties; (n). Receive and remove wrecks; (o).

⁵⁴ See section 45 of the Act.

⁵⁵ (1962) 1 ALL NLR 584; (1962) 2 SCNLR 341.

⁵⁶ See Section 251(1) (G) of the 1999 Constitution of the Federal Republic of Nigeria (as amended); Section 7(1)(g) Federal High Court Act 1973; Section 3 Admiralty Jurisdiction Act. See also O.W. Arugu, ‘Admiralty Jurisdiction and Practice in Nigeria’.

⁵⁷ *American International Insurance Company v Ceekay Traders Ltd* (1981)5 SC 81, *Aluminium Manufacturing Company (Nig) Limited v Nigerian Ports Authority* (1987)1 NSCC 224, *Maersk Nigeria Limited v Uma Investment Company Limited* (2013) LPELR 21247(CA, PH DIVISION).

Provide maritime security; and p. Establish the procedure for the implementation of conventions of the International Maritime Organisation and International Labour Organisation and other international conventions to which the Federal Republic of Nigeria is a party on maritime safety and security, maritime labour, commercial shipping and for the implementation of codes, resolutions and circulars arising therefrom.

Nigerian Shippers Council

This is an organisation responsible for the protection of the interests of importers and exporters on matters bordering on the shipment of their goods to and from Nigeria. It was established by the Federal Government through Decree 13 of 1978. One of the functions of the Council is to consider problems faced by shippers with regards to coastal transport, inland waterways transport and matters relating generally to the transport of goods by water and to equally advise government on possible solutions thereto. The Council is involved in the implementation of the Cabotage Act, by showcasing its relevance as an advocacy body for protection of shippers' interests. It has expressed concern about the cabotage law with respect to capacity, costs of cabotage services and concept definitions.

The National Inland Waterways Authority (NIWA)

This was formerly the Inland Waterways Department in the Federal Ministry of Transport. However, in 1997, it was then elevated to a full Authority by the National Inland Waterways Decree of 1997. Its objectives are to improve and develop inland waterways for navigation; to provide an alternative mode of transportation for the evacuation of economic goods and persons; and to execute the objectives of the national transport policy as they concern inland waterways. Some of the services provided by NIWA in accordance with the law setting it up include regulatory services, transport services, engineering services, marine services and survey services. Section 22 (2) of the Cabotage Act acknowledges and reserves the rights of Government agencies like NIWA to continue the issuance of applicable permits to vessels and crafts, which operate along the inland waterways. Hence, vessels intended for use in cabotage trade within the inland waters shall continue to obtain applicable permits as prescribed under the NIWA Act of 1997.

9.0 The Effect of the Cabotage Act

The desired effect of the Cabotage Act can be gleaned from its preamble⁵⁸ which provides that "this Act restricts the use of foreign vessels in domestic coastal trade, promotes the development of indigenous tonnage and establishes a cabotage vessel financing fund". It can then be concluded that the major objectives and effect of the Cabotage Act in Nigeria's domestic coastal trade is the restriction of the use of foreign vessel; the promotion of indigenous tonnage and the establishment of a cabotage vessel financing fund.

Economically, cabotage principle encourages and ensures the development of domestic shipping through the establishment and development of the national merchant fleet thereby boosting economy of the State⁵⁹. The effect of the Act on the local shipping industry is the establishment of a liberal

⁵⁸ See the preamble of the Cabotage Act, see also Savage-Oyekunle Oluremi, 'The Effect of the Cabotage Act 2003 on the Nigerian Maritime Industry', [2017], *Rethinking the Administration of Justice*.

⁵⁹ Ferdinand O. Agama and Henry C. Ansigwe, 'Cabotage Regimes and their Effectiveness on State' Economy [2018] *NAUJILJ* 9(1).



protectionist policy that would protect indigenous shipping companies from death & incapacitation which results from the domination of the carriage of cargo within Nigeria waters for foreign vessels⁶⁰.

The empowering of the indigenous shipping companies to build their capacity to acquire more vessels which will further increase the nation's tonnage that Nigeria desperately needs so as to have some leverage in international maritime negotiations⁶¹.

Furthermore, the availability of an indigenous fleet and seaman especially in times of conflict will assure an effective policing of the waterways and thereby contribute greatly to attainment of national security⁶², this is because the involvement of foreign vessels and personnel in the State's coastal trading might not only generate unhealthy competition in the country's coastal trading and economy but can increase cases of terrorism in the State. America for instance, is conscious of this in choosing which form of cabotage regime to operate⁶³.

10.0 Conclusion

In conclusion, it can be agreed that cabotage policy remains one of the best ways to develop indigenous shipping in the country, which led to the loud clamour for its enactment by various interests and the relief that greeted its promulgation into law in the year 2003. We also found in this work that the form of cabotage policy a country adopts would largely depend on its economic, political and security concern. Hence it is important that states engaging in maritime trade should enact and enforce cabotage policy in order to encourage indigenous participation.

11.0 Recommendation

This work strongly recommends that the cabotage Act can only be effective if all stakeholders involved in its implementation work together to ensure that this legislation is given flesh by ensuring that every provision of the act is implemented without biasness and with transparency. In the event of ship building and registration, it is important that the provisions of the Act covering these factors are adhered to strictly.

⁶⁰ Salvage-Oyekunle Cit 58.

⁶¹ Mfon Ekong Usoro, 'Cabotage Policy & International Maritime Politics: The Nigeria Coastal and Inland Shipping (Cabotage) Act 2003. www.paulusoro.com/publication/cabotagepolicy. Accessed on 20/06/2019.

⁶² Ibid.

⁶³ Ferdinard O. Agama and Henry C. Ansigwe, 'Cabotage Regimes and their Effectiveness on State' Economy [2018] *NAUJILJ* 9(1).