

ADVOCACY PAPER FOR THE PROMULGATION OF A NIGERIAN MARITIME CABOTAGE LAW.

By Mike Igbokwe Esq¹

Meaning of Cabotage.

Black's Law Dictionary 6th Edition defines *Cabotage* on its page 202 thus, "A nautical term from the Spanish denoting strictly navigation from cape to cape along the coast without going out into the open sea. In International Law, *Cabotage* is identified with coasting – trade so that it means navigating and traveling along the coast between the ports thereof". It is also a term from the French word "*caboter*" meaning "to sail along a coast". *Cabotage* has however come to be known as "coastal trade" or "coasting trade" or "coastwise shipping" meaning carriage of goods and persons by ships between ports on or along the same coast or between ports within the same country and the exclusive rights of a country to operate sea traffic within its coasts, or to operate air traffic, road traffic or rail traffic within its territory. In this regard, there can exist cabotage in the different modes of transportation namely *maritime cabotage*, *air[line] cabotage*, *road cabotage* and *rail cabotage*. This paper is however concerned with *Maritime Cabotage*.

There is also another type of *maritime cabotage* which is often referred to as Short Sea Shipping which is concerned with the transportation of goods and/or passengers between ports of a given group of countries within a specific economic grouping (e.g. Mercosur, and the EU) and may be by way of coastal ships, ferry services or and port services such as tugs, dredgers, maintenance and repair of craft, pilotage launches, bunkering and supply of vessels etc. Cabotage policies are applied in such regions or sub-regions in the stead of an individual country, and as a result of inter-governmental agreements in order to favour local or regional employment and to control regional and or sub-regional coastal trades.

Meaning of Maritime Cabotage Law.

Maritime Cabotage Law is a law empowering navigation and trading within a country's coasts or from port to port within a nation [domestic shipping] to be reserved exclusively for and carried on by its national flag ships and nationals. It has also been argued that the navigation and trading extends to inland waterways. The cabotage law can be contained in a single legislation, or in a combination of two or more shipping legislations, of a country.

Presently, there are strict cabotage laws and relaxed or modified or liberalized cabotage laws being applied by different nations as dictated by their national interests and local situations. In a strict maritime cabotage legal regime, three elements of restriction of coastal [and admittedly inland waterways] trade are conspicuous namely that, cabotage is restricted to ships built, owned, crewed and operated by citizens of a country. Maritime cabotage laws are said to be relaxed, modified or liberalized if those three elements are not strictly enforced and there are some levels of foreign participation either in the ownership or building of the ships and nationality of the operators involved, or of foreign-registered ships' involvement, in a nation's coastal shipping.

Strict Cabotage Legal Regime.

One of the best examples of a regime of strict cabotage laws is as found in the United States of America by a combination of some of its shipping laws namely, Section 27 of its Merchant Marine Act of 1920 Public Law 66 – 261, also popularly known as "the Jones Act" which was passed for the promotion, protection and maintenance of a US domestic merchant marine under and by virtue of which Jones Act, all waterborne goods

¹ Mike Igbokwe Esq [LLB. Hons, BL, PG Dip. [Maritime Law], is a Legal Practitioner and a Notary Public for Nigeria engaged in corporate, commercial and transportation law practice. E-mail: mi.lawoffice@nova.net.ng

between US ports are carried in US flagged ships, *built* in the USA, *owned* by US citizens and *crewed* wholly by US citizens; the 1886 US Passenger Services Act which states that no foreign vessel shall transport passengers between ports or places in the US under a penalty of US\$200 for each passenger so transported and landed; and other US shipping laws. Before the Jones Act [an Act so called after its sponsor from the state of Washington, Senator Wesley L. Jones], the US had forbidden foreign ships from trading within its coasts since 1817. The US Merchant Marine Act of 1936 also allows the government to bar foreign vessels which have been built cheaply by means of subsidy if they operate in the US domestic trade. So with the above and other shipping laws, the movement of goods and passengers within the US ports and coastwise trade are in the hands of US citizens and ships exclusively. The laws are deliberate US protectionism policies put in place in order to protect its domestic maritime industry from foreign participation, control or domination at the expense of its nationals and its domestic shipping industry.

It is instructive that up till today and notwithstanding globalization, liberalization and anti-trust initiatives and promotions of and by the US and the US-backed WTO, there is immense support in the US from its policy/law makers and key figures for the protection and retention of its strict cabotage laws without any reforms or relaxation. For instance, between 1995 and 1998 there were pressures on the US Government to repeal the Jones Act or reduce its effect through new laws that would permit freedom of transport, but both at the public hearing and based on the outcome of the debate, the efforts failed woefully and because the proponents of its retention succeeded, the status quo was maintained. The Maritime Cabotage Task Force (MCTF) had also been formed in the US in 1995 by a group of companies in the US to work for the retention of its strict cabotage laws and promote US ships carrying on domestic commerce and it played a major role in defeating recent efforts to relax US cabotage laws. In a statement made on 22nd May, 2000 by former US Vice President Albert Gore Jr., he said *the Jones Act was the foundation of the maritime industry and an essential fabric of US economic and national security* whilst the US President George Bush supported the Jones Act because he saw the Act's contributions to the growth of the US domestic fleet, US economy, defence and international trade. In a similar vein, ex-President Clinton also supported the Jones Act.

Relaxed Cabotage Legal Regime.

There are countries like India, the Philippines, Australia and Malaysia where certain aspects of their cabotage laws are already relaxed or liberalized or are being relaxed or liberalized. For instance, as a result of relaxing its cabotage laws in 1992, India allowed for five years, foreign shipping lines only to consolidate export containers at an Indian Port and transship them to a foreign port and to run feeder services to reach import containers at various ports but has since the expiry of the five year period not extended it. Whilst foreign shipping lines have been lobbying for total freedom to operate coastal services in India on the basis that it will help Indian ports and its international trade, Indian shipping companies are opposed to further relaxation of its cabotage laws because their ships and their ports did not benefit from the 1992 relaxation of its cabotage laws. The Indian Union Government then considered a suggestion to allow foreign companies to operate exclusive shipping services along Indian coasts without limitations but its Directorate General of Shipping had to meet with foreign shipowners, shippers and chairmen of ports trusts for the resolution of the matter.

In the Philippines, where section 1009 of its Tariff and Customs Code allows for clearance of foreign vessels after procurement of special permits to and from coastwise ports under certain conditions to take cargo and passengers at any port to foreign ports, a Memorandum of Agreement was drafted by a Technical Working Group of representatives of some stakeholders clarifying the functions of some organs in the implementations of the said section 1009.

In Australia, where cabotage is based on the Navigation Act of 1972, Customs requirements and Immigration Laws, 90% of its coastal trade is by Australian crewed ships and all vessels operating along its coasts are licensed or permitted under certain conditions. In 1996, the Government of John Howard set up the Shipping Reform

Committee to advise it on options for the windback and removal of its cabotage laws after whose report the Government had among other things liberalized the license/permit system enabling greater participation by foreign vessels in coastal waters and established “company employment” in the stead of the “engagement system” for dock workers. There is a general impression that Australian cabotage laws allow only Australian-flagged and crewed ships on its domestic shipping and that where there are no Australian ships available, foreign vessels are granted single voyage permits. The Maritime Union of Australia usually argued that shippers are manipulating the system by waiting until an Australian-manned vessel sails out and then rush to the Government for a permit to contract a foreign-flagged ship with third world low-paid crew and substandard ships to participate in its coastal shipping thereby putting off work, Australian ships and seafarers. The Maritime Union of Australia is also still strongly opposing the John Howard-led shipping policies because the relaxation of Australian cabotage laws will among other things lead to a loss of jobs for Australian seafarers, coastal and environmental issues, oil spillage, substandard ships of flag of convenience shipping, and threats to road transportation and went to court on the matter.

However, in an information paper² released with the approval of the Australian Transport and Regional Services Minister Mr. John Anderson, on 24th November, 2000, on the application of the current Cabotage regime in Australia in “light of both the Federal Court case where Justice Kenny dismissed all claims made by the maritime unions, and the continuing high level of misunderstanding in the industry as to the scope of cabotage”, he said that the Australian legislation on cabotage “*provides shippers with access to the movement of coastal cargo irrespective of a vessel’s flag, nationality of the operator and nationality of crew*”.

Malaysia is another country whose relaxed cabotage laws permit foreign-registered vessels to be temporarily licensed by the Domestic Shipping Licensing Board [DSLMB] to carry on coastwise trading where there are no available Malaysian vessels. However, there are complaints by Malaysian Shipowners Association [MASA] of circumvention and manipulation of the system by Malaysian shippers especially in respect of oil tankers where there are insufficient Malaysian-registered vessels, by falsely misleading the DSLMB and by acting as “fronts” for foreigners.

MERITS OF A CABOTAGE LAW FOR NIGERIA.

As a shipper nation 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.

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 through developments of its inland waterways by dredging coastal waterways and silted channels of about 3,000 kilometres of inland waterways under the jurisdiction of National Inland Waterways Authority. The Onitsha River port will be rehabilitated and the plan of developing the Oguta Lake River port 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.

² AUSTRALIA’S COMMONWEALTH DEPARTMENT OF TRANSPORT AND REGIONAL SERVICES: MEDIA RELEASE BY JOHN ANDERSON titled Release of information paper on cabotage dated 24/11/2000.

Moreover, a developed, safe, reliable and efficient domestic marine transportation of cargo and persons will relieve a lot of pressure from other modes of transportation (rail, road, and air) 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 will not only reduce road congestion during peak working hours in Lagos but will also reduce the man-hours spent on 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 coastal shipping [which cabotage laws would have facilitated], to Warri, Onitsha and Onne ports from Apapa and Tin Can Island ports and also to Lokoja. Developed and reliable cabotage is therefore important to the economy in this regard.

2. Economic boom.

Since foreigners are barred from the operation of coastal shipping by cabotage laws, it means that cargo especially oil [both crude and refined] being lifted solely by foreign-registered ships will now be reserved and guaranteed for Nigerian-registered or owned vessels and this keeps them going in business. The availability of cargo and passengers to sustain their business makes domestic shipping companies attractive to credit facilities for fleet and business expansion and attracts more investors into coastal shipping business. Insurance companies will be engaged to insure cargo and vessels and seafarers, banks will be contacted to finance the building and the acquisition of coastal vessels whereas the Nigerian shipyards and dry-docks will have greater patronage in building and repairs of ships. The construction industry would also benefit from the construction, expansion and repairs of ports and dredging of the inland waterways, just like those in information 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 and those supplying services needed in the coastal and inland maritime industry will all benefit from a regulated cabotage legal regime in Nigeria. These increased economic activities in the maritime industry are capable of being induced by cabotage law.

3. Development of the Shipbuilding and Repairs Industry-

Restricting coastal waterborne trade to only Nigerian-built and/or owned vessels will lead to the development and growth of Nigerian shipyards and dry-dockyards including Nigerdock, as a result of their increased patronage by a large number of Nigerian shipping companies which will need to have their coastal ships built or repaired in Nigeria for quicker supplies. The shipyards could be building new domestic trade vessels e.g. tankers, bulk carriers, tugs, barges, containerships, roll on-roll off vessels, ferries, cruisers and dredging vessels, to meet Nigerian local needs and also will have enough demands to maintain their full capacity utilization.

At a recent maritime workshop held in Lagos³, the Managing Director of Nigerdock, Mr. Nkpubre said that Nigerdock has up to date built 26 vessels which are mainly waterways vessels the highest tonnage of which is 150 tons although in the past three years Nigerdock's facilities had been upgraded to a capacity to build up to 3000 tons gross tonnage vessels comprising mainly tugboats, coastal tankers and supply boats for which there is present and potential market in the West and Central African sub-regions. In addition to such vessels, the Nigerian shipbuilding industry could also build ferries and fishing trawlers which would also facilitate coasting trade. The opportunity to build Nigerian coastal ships preserves shipyards' base. The increased need to build and repair

³ Workshop on "Challenges of Maritime Practice in the new Millennium" organised by the Federal Ministry of Transport in collaboration with its parastatals and Foundation Chambers from 26th-28th February, 2001 at Le Meridien Eko Hotel, Victoria Island, Lagos.

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 revenue for Nigerian shipyards and government.

4. Growth of domestic fleet/tonnage.

The restriction of cabotage to only Nigerian-built and/or Nigerian-owned ships and the attraction of investment as a result of availability of cargo, will cause increment in domestic fleet/tonnage involved in coastal and inland trade. If Nigeria cannot and is yet to afford a high fleet/tonnage in seagoing vessels, at least it can pride itself in starting from the development and growth of and developing and growing a Nigerian-cabotage fleet which it can use for the control of waterborne commerce in its coasts and inland waterways thereby becoming a maritime economic power in the West and Central African sub-regions if not Africa. Nigerian cabotage laws will help Nigeria to attain this benefit. A developed and grown cabotage-induced domestic fleet/tonnage becomes an appropriate entry point to international shipping by Nigerian shipping companies and which will prepare them well for competition with foreign ship owners in international shipping.

In the 1997 study marked “Full Speed Ahead” the US Maritime Cabotage Task Force [MCTF] declared that “Between 1965-1995, the Jones Act fleet doubled in size and tripled its productivity to the point where it routinely carries more than 1 billion tones of *cargo* and 100 million *passengers* between US ports each year. Nationwide there are more than 44,000 vessels in the Jones Act fleet generating yearly 125,000 *jobs*, 80,000 of which are shipboard. The Jones Act represents a \$26 billion private sector investment in vessels and infrastructure.” The Nigeria’s domestic fleet can also similarly grow and make similar contributions to the Nigerian economy upon the promulgation and implementation of cabotage laws.

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 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 waterways.

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 laws 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 also 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. 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 report⁴ 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, will reduce.

7. Revenue and conservation of Foreign Exchange.

There will be increased revenue to the State and Federal governments in Nigeria as a result of cabotage laws in that the many employed seafarers will pay personal income tax, the Nigerian shipping companies that will own and operate the coastal vessels will pay corporate tax and so shall the shipyards pay corporate tax and other duties [excise]. On the other hand, since foreign-owned ships trading in Nigerian coastal waters do not pay all the taxes that Nigerian-owned ships trading in Nigerian coasts pay, it has been tantamount to loss of such revenue to the governments. Tourism which the ferries will encourage will also yield revenue to the government.

Since the cabotage laws would restrict coastal shipping to Nigerian-built and Nigerian-owned ships, by building and maintaining the vessels engaged in coastal shipping in Nigerian shipyards and dry-dockyards, Nigerian foreign exchange reserves which would otherwise have been applied to the purchase and repairs of such ships abroad by Nigerians will be conserved. This will reduce if not stop capital flight. The conserved foreign exchange earnings can then be channeled towards developments of shipping and

⁴ ITF Maritime Department: Policies: "From Oslo to Delhi Document, 1998 Chapter Five, Cabotage and Regional Standards".

socio-economic infrastructure and the reduction of the national debt now put at US\$28.64 billion by the Debt Management Office.

8. National Interest – economy, defence/security.

The national interests to be protected by cabotage laws are two-pronged namely, **economy and defence**. Many maritime countries give various subsidies to their shipping companies and ship owners in order to facilitate their ability to compete with the other maritime nations in waterborne trade. For instance in the US, the Operating-Differential Subsidy [ODS] where subsidy is based on the difference between the fair and reasonable cost of insurance, maintenance and repairs not compensated by insurance, wages of officers and crews, and the estimated costs of the same items if the vessels were operated under foreign registry, is granted to US ship operators to place their ships' operating costs on the same parity with foreign competitors. There is also the US Federal Ship Financing Guarantee Programme [FSFGP] under the Merchant Marine Act of 1936 where US-flagged vessels operators are assisted in procuring private long-term financing at favourable interest rates to build ships in US shipyards for domestic and foreign trade and the repayment or non-payment of which is guaranteed and insured by the US government. Apart from the reservation of transportation of national cargo in international trade for only US ships through the Cargo Preference Act of 1940, there is the US Capital Construction Fund [CCF] Programme under the Merchant Marine Act of 1970 for assisting operators in accumulating capital to build, acquire and reconstruct ships through deferral of Federal income taxes on certain deposits e.g. from vessels operations, proceeds from the sale or loss of ships and ships' depreciation. The US shipping industry also has the experience and managerial skill in ship operation borne out of many years of existence of its maritime industry.

When such highly subsidized foreign merchant fleet trade in Nigerian coastal and inland waters along with Nigerian coastal ships and since they and their crews are not subject to local taxes, the Nigerian coastal ships and their owners who are not supported by such subsidies but pay the local corporate and income taxes will be placed in an unfair position to compete with them. Nigerian coastal shipping companies will also not be able to withstand the foreign competition since the playing field is not level. However, what cabotage will achieve when promulgated and implemented in Nigeria is that it will protect Nigerian coastal shipowners, operators and coastal trade from foreign shipping participation/trading, competition and domination since cabotage will be restricted to only ships that are Nigerian-built/owned and Nigerian-crewed. That way, it will enhance continued domestic economic growth and development, keep domestic shipping jobs in Nigerian hands and is therefore in the national interest.

In the area of **defence or security**, banning foreign vessels from coastal and inland waters trade will mean the exclusion of those foreign ships that may be used for or involved in espionage against the nations' internal security and defence from doing so from our coasts.

The development and growth of high domestic fleet to meet the extra business available due to the exclusion of foreign participation will make available, a ready and able fleet for the use of the Nigerian Armed Forces especially the Navy in times of conflict or national emergency. Nigeria which has been playing a major role in peace keeping/maintenance and peace enforcement in Sierra Leone and other West African countries through ECOMOG under the auspices of ECOWAS can have the waterborne transportation needs of the Armed Forces including its Navy met for the quick deployment of military personnel, equipment and supplies in times of emergency or crisis in the West African sub-region. Due to an available reasonable pool of vessels and seafarers which the Armed Forces can rely on and make use of, the Nigerian Armed Forces will not have to rely on foreign vessels or countries to achieve their aims moreso when in times of any national emergencies or crisis, foreign ships will not be willing to come to Nigerian coasts. Moreover, reliance on foreign ships or countries during such times may also jeopardize Nigeria's national security.

The Nigerian cabotage fleet will also readily give the Nigerian Armed Forces including the Navy, access to Nigerian ports and inland waterways and provide mobilization crews for government ships. 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. Therefore, the Nigerian cabotage fleet can also be available for similar purposes to supplement the naval and national fleet. This saves our Armed Forces the enormous cost of purchasing and manning such vessels in times of peace and conserves budgetary allocation that would have been spent for such purposes for the Nigerian Navy, for application to other sectors of the Nigerian economy.

9. Competition on a level-playing field.

Since Nigerian Cabotage laws 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 states 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 skills and are subject to such taxes and presently lack any government subsidies or incentives or favourable ship acquisition loans. This is tantamount to allowing foreign domination in the domestic waterborne coastal trade.

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, cabotage laws 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 capacities lead to lower freight rates which in turn bring about increasing 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 which 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.

10. Nigerian Ownership and Control.

Due to the fact that Nigerian cabotage law will limit domestic waterborne trade to Nigerian-owned/built, crewed and operated ships, such a law 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, it will allow Nigerians to own and control and retain the ownership and control of the operation of such a key section of the Nigerian economy and eliminate foreign control, domination and competition from that sector, and prevent avoidable damage to the Nigerian economy through foreign manipulation. It is instructive that even the US actualized and retains the ownership and control of its coastal shipping and international maritime trade by its citizens through the Jones Act, other promotional incentives such as the Operating – Differential Subsidy (ODS) and the Capital Construction Fund (CCF) which have been referred to above.

11. Training of Seafarers.

Cabotage provides national 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 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, 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.

12. Safety and Environment:

Cabotage law will prevent sub-standard foreign [including Flag Of Convenience] vessels known for low safety standards from trading in Nigerian coastal and inland waterways thereby reducing the risk of marine casualties and hazards; the pollution and degradation of the environment. This is because the Federal Government of Nigeria as part of its Flag State, Coastal State and Port State controls can through the Government Inspector of Shipping or the appropriate authority ensure that before any Nigerian-owned ship is registered for coastal trading, its inspection must show that it has met certain minimum international standards that will enhance safety and environmental protection in line with International Maritime Organization's policy of "safer shipping and cleaner waters". Unless flag, port or coastal state controls are used, foreign ships below the internationally acceptable standards could easily cause mishaps and environmental problems within the coastlines if allowed to partake in coastal and inland waterways shipping.

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 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. The US ad foreigners would also not rightly oppose Nigeria's promulgation of [strict] cabotage law, otherwise the whole world will see it as hypocrisy and double standards. 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.

Mike Igbokwe Esq.

Mike Igbokwe & Co, 36 Glover Street, Ebute Metta East, Lagos.

Tel: 4702050. Mob: 4701144. mi.lawoffice@nova.net.ng