

# **CABOTAGE POLICY AND INTERNATIONAL MARITIME POLITICS THE NIGERIAN COASTAL AND INLAND SHIPPING (CABOTAGE) ACT 2003**

## **1. BACKGROUND**

To appreciate the necessity and the importance of cabotage law we need to refresh our minds with some background information on the operating environment. Nigeria made up of 36 states plus the Federal Capital Territory has a total land area of 924,000sq km with an estimated population of about 130 million (latest IMF figure). Nigeria is blessed with a coastline of about 870km and about 3,000 kilometres of inland waterways. Spend a moment to reflect on the import of these statistics in terms of the enormous trade opportunities. Our natural resources include petroleum, natural gas, tin, columbite, iron ore, coal, zinc, limestone, lead, and in reserve the country has 22.5b cubic metres of crude oil, 3.5 trillion cubic metres of gas and 42.7b cubic metres of Bitumen.

### **1.2 MARITIME INDUSTRY**

Nigeria currently has 6 major ports (Tin Can Island, Apapa, Warri, Port Harcourt, Onne and Calabar) and 10 crude oil terminals (Escravos, Bonny, Sapele, Forcados, Tuma, Okrika, FOT etc). Nigerian Ports Authority (NPA) Annual Account 1999 showed that ship traffic into the major ports excluding tankers was estimated at approximately 3,500 vessels per annum and the overall cargo throughput (excluding crude) was 22.23 million tones. The total number of passengers that pass through the sea ports is estimated at 15,000 per year. In 2000, statistics from NPA indicated that 4,070 vessels with 121,350,844grt visited Nigeria. The overall cargo throughput in the same year was 28,859,274 million tonnes. Container traffic at major ports was 119,458 TEUS (outwards) and 204,299 TEUS (inwards). We also have several inland ports dotted along the 3,000km of inland waterways including Onitsha, Oguta, Opobo, Lokoja, Baro, Jebba etc. Nigeria being a major oil producing and exporting country records approximately 1,000 petroleum tanker vessels calling at her ports annually, with an average tanker size of about 95.000 GIRT.

With this level of economic activities revolving around sea transportation one would assume that Nigeria is a major maritime nation. Sadly, this is not the case. In the maritime world a country is measured by the percentage of the world's total tonnage flying the flag of that country i.e. vessels owned by that country. I hear people speak with nostalgia about the late 1970s and earlier 1980s when Nigeria had a bout 24 vessels in its national fleet. The fact as revealed by the Nigerian Shipping Companies Association (NSCA) is that even in those days of the now defunct NNSL, indigenous shipping companies carried a mere 11 % of the total volume of Nigerian traffic and earned less than 9% of the total freight revenue. Now Nigeria does not carry any of its crude oil under international shipping.

In year 2000, only 139 indigenous marine vessels (less than 6%) were involved in this traffic with a cargo throughput of 441,031 tonnes (1%). Indigenous shipping companies do not own any vessel for deep-sea trade a few that participate operate the vessels on charter.

A study carried out by the International Maritime Organization (IMO) on Nigeria's maritime industry in April 1999 reported that only 97 vessels excluding fishing vessels were registered under the Nigerian flag. Of the 97 vessels 66 were tankers, 20 were cargo vessels and 1 passenger vessel. Much of the trade reported above is carried aboard tankers and cargo vessels. A n unconfirmed data from the office of the Registrar of Ships in 2002 indicated that we have 98 tankers and 26 cargo vessels. This means that between 1997 and 2002 Nigeria recorded an increase of only 32 tankers and 6 cargo vessels. Even more worrying is the fact that a closer examination of the Nigerian flagged vessels would reveal that most of these vessels are actually owned by foreigners. An analysis of this data aptly demonstrates the domination almost exclusively of the commercial operations of carriage of goods, services and passengers in the inland and coastal waters of Nigeria including oil rigs and installation by

foreign owned and foreign crewed vessels to the exclusion of indigenous operators. A passage from the Briefing to the Senate on the Enactment of Cabotage by the Maritime Cabotage Task Force of NSCA in 2002 reproduced hereunder states thus:

*"Currently 95% of marine vessels operating within Nigerian waters are owned by foreign shipping operators. Only about 3 out of the 12 product tankers presently engaged by the PPMC (NNPC) in coastal lifting of petroleum products are owned by Nigerians but are foreign flagged. Each vessel earns about US\$8,000.00 a day, which amounts to about US\$2.88 million for the 12 vessels monthly. The PPMC spends annually US\$34.56million on coastal lifting out of which about US\$32.67 million is repatriated out of this country annually.*

*The oil producing companies may have spent about US\$20 billion to work their various offshore fields this year. The estimated budget of the maritime (shipping) component of this expenditure is about 10% which is about US\$2 billion a year. Over 75% (US\$1.5 billion) of this revenue is repatriated offshore annually because Nigerians do not own, operate and man the offshore vessels and services supporting offshore oil operations. This represents what Nigerians stand to earn if a cabotage regime is enacted and enforced in Nigeria. "*

## **2. MEANING OF CABOTAGE**

The word cabotage taken from the Spanish root "cabo" "cab" simply means maritime circulation at short coastal distances. The **Coastal and Inland Shipping (Cabotage) Act, 2003** signed into law by the President in April this year has a very wide definition of the word cabotage which is used interchangeably with coastal trade. For the purposes of this presentation, cabotage under the Act covers:

- carriage by sea of goods and passengers from one coastal or inland point which could be ports, jetties, piers etc, to another point located within Nigeria;
- carriage of goods and passengers by sea in relation to the exploration, exploitation or transportation of natural resources whether offshore or within the inland and coastal waters;
- carriage of goods and passengers on water or underwater (sub-sea) installations;
- carriage of goods and passengers originating from a point in Nigeria intended for Nigeria but transiting through another country then back to Nigeria for discharge;
- operation by vessel of any other marine transportation activity of a commercial nature in Nigerian waters includes, towage, pilotage, dredging, salvage, bunkering etc.

Sections 3 to 6 of the Act seeks to reserve the bulk of the coastal trade i.e. the carriage of goods and passengers where possible on vessels built, owned, registered in Nigeria and manned by qualified Nigerian seafarers. The 4 pillars of cabotage from the foregoing are that cabotage vessels must be built, owned, registered and manned by the nationals of that country.

## **2.1 TYPE OF CABOTAGE**

In the preceding section, we presented data on the level of indigenous participation in the marine transport sector of the Nigerian economy which indicated gross inadequate indigenous capacity. There is a general consensus that Nigeria does not have sufficient domestic capacity in both the ownership and infrastructural aspects of cabotage covered in the Act. Taking due account of the inadequate indigenous capacity, the Act advocates a liberal cabotage policy

through the use of the **internationally recognized waiver system**. The waiver principle is generally based on any or all of the following:

- Non-availability
- Reciprocity or
- Bilateral agreement

In Germany for instance, waivers are only granted to non-EU vessels on the basis of non-availability or, if they are available at very unfavourable conditions. Portugal, Spain, and Sweden also grant waivers if no E.U. vessels are available for the particular service. Greece and Canada grant waivers based on reciprocity to vessels from countries that allow Greek or Canadian flags to participate in their cabotage trade. Germany, Finland and Sweden grant access to non- EU vessels if they have been granted access on the basis of bilateral agreements.

Records show that waivers are generally granted very sparingly. In Finland, only 4 waivers were granted in 1997 and in Greece only 18 waivers between 1997/98. Most cabotage countries did not record any waiver in the period under review.

The Nigerian Cabotage law operates its waiver system only on grounds of non availability. This means that waivers may be granted on all the 4 pillars of cabotage where the non-availability criteria is satisfied. The conditions for granting waivers are expressly spelt out to prevent the use of waivers to subvert the noble objectives of the Act. For waivers to be granted and depending on the application, the Minister must be satisfied that requirement requested to be waived is/are not locally available. The Act also makes it mandatory that where the conditions suitable for the grant of a waiver is established, the Minister must follow the prescribed order i.e. priority to a Joint venture company between Nigerians and non- Nigerians. Where this is not available then 100% foreign owned vessel shall be licenced to supply the service.

Foreign flagged vessels which are on long term charter to Nigerians are eligible to engage in cabotage trade. For these to be possible within our jurisdiction and to cater for the peculiarity and constant mobility of the vessels involved in the oil sector, the Act allows for dual registration by permitting temporary registration for such vessels under Section 28. The practical implications of these provisions are that foreign shipping companies are guaranteed at least in the medium term continued participation in cabotage upon the satisfaction of prescribed conditions.

Extensive and practical enforcement provisions are provided in order for the Cabotage Act to achieve its laudable objectives. It has provisions to curb if not completely eliminate subversive practices by stakeholders. The ownership criteria are indeed very rigorous and any contravention of those provisions is criminalized in the Act. It would therefore be quite difficult to have respectable citizen lend their names as fronts to foreign shipowners.

Another interesting aspect is that the operation of cabotage will be at little or no cost to the public funds as the Act contains provisions for the beneficiaries to contribute to the successful operation of the cabotage regime.

## **2.2 NIGERIAN COASTAL TRADE AND POTENTIALS OF CABOTAGE**

Coastal trade offers great opportunities for investment and growth of the domestic maritime industry. Coastal trade covers the entire gamut of marine transport activities carried on within

Nigerian exclusive economic zone and inland waters except those activities which are exempted in the Act. The aspect that is commonly spoken of understandably is the offshore industry. Data from the MCTF presented earlier indicated that the estimated budget of the maritime (shipping) component of the offshore industry is USD2 billion a year. Nigerians would certainly wish to invest and take some share of this revenue.

Other equally profitable aspect of cabotage trade which so far has received little attention are:

- Fishing industry;
- Passenger ferry services;
- Towage;
- Salvage;
- Dredging (coastal and inland waterways);
- Liquid bulk e.g chemicals, oil and its derivatives;
- Dry bulk e.g iron ore, coal, grains;
- General cargo (feeder and inland transport);
- Container cabotage trade;
- Shipbuilding and repair (ship yards, repair yards, emergency repair facilities anchorage);
  
- Maritime auxiliary services (freight forwarding services, storage and warehousing, maritime agency services, container/depot services);
- Port services (pilotage, bunkering, garbage and ballast waste disposal, victualling, communications and electrical supplies);
- Maritime insurance and finance sector (credit facilities for fleet and business expansion);

- Training schools for the respective skills required in manning and operation of vessels which will compliment Maritime Academy, Oron;

In general, the cabotage regime will effectively remove the blockade mounted by foreign operators against entry of new indigenous operators. Well implemented, it will promote the development and maintenance of an adequate and competent indigenous merchant marine tonnage and competition among stakeholders operating under a level-playing field. Apart from the obvious ones listed above, it is hoped that cabotage law will stimulate private/public sector investment in the development of maritime infrastructure such as ports, waterways and inter-modal connections, vital links to multi-modal transportation network, reliable and cost effective coastal feeder services. The enormous potential for job creation and the availability of a pool of trained and efficient indigenous seafarers cannot be over looked. Furthermore, the availability of indigenous fleet and seamen in times of conflict and effective policing of the waterways would contribute greatly to national security. Revenue generation for government by way of fees for registration, approvals and licences and fines is another anticipated benefit of cabotage. Also important is that the cabotage vessels would boost Nigerian tonnage and Nigeria desperately needs that to have some leverage in international maritime negotiations.

Several countries have openly attested to the benefits of cabotage to their national economy and security. We are familiar with the statistics from the United States on the benefits of cabotage commonly produced in the media by advocates of cabotage. President Bush in his 2002 National Maritime Day speech noted that America's waterborne domestic trade totals one billion tons a year and emphasized the importance of cabotage to the nation's economic well being and national defence capabilities. Cabotage regime in Brazil saw the evolution of Brazilian cabotage merchant fleet from 500, 000grt in 1970 to 3, 500, 000grt in 2000. The volume of cargo in their cabotage trade leaped from over 31m tons in 1994 to nearly 67m tons

in 2000. Every country which operates cabotage regimes has similar experiences with regard to the positive effects of cabotage in their maritime industry.

### **3. NIGERIAN CABOTAGE POLICY VIZ-A-VIZ INTERNATIONAL MARITIME POLITICS**

This, I suppose, is one of the major planks of this topic. It is indeed a legitimate concern and I am not surprised as some in the audience work for multinationals and the policy making arm of government. I do know that the issue of its implication on Nigeria's international obligations was of grave concern to the President, the Legislators and the former Minister of Transport Chief Ojo Maduekwe. The then Chairman of the House Committee on Transport did request me at that time to write a position paper on the issue so that he could be armed in his discussions with his colleagues, the Minister and the President. Infact Chief Maduekwe not being completely satisfied with our efforts to allay his fears in that regard, undertook a trip to the United States, one of our major trading partners to find out how cabotage would impact Nigeria's international obligations given the current climate of trade liberalization. We were all pleased that his audience with his colleague, the US Secretary of State for Transport, removed all iota of doubt in his mind. First of all, I proceed from the understanding that the topic actually relates to international conventions, agreements, protocols and regulations and not solely on international maritime politics. I concede also that in practice a lot of north/south politics does come into play in maritime trade practices.

#### **3.1 INTERNATIONAL MARITIME RELATED CONVENTIONS AND AGREEMENTS**

The sea as we will all agree does not recognize national boundaries. It takes its course as directed by nature. Some countries are bordered by the sea and some are completely landlocked. The sea provides the cheapest and most efficient means for bulk transportation of goods and services needed by every country. It is for these reasons that international customary law throughout the ages recognizes the

principle of common usage with respect to the use of the sea, rivers and waterways. The acceptability of this principle of international customary law is of such significance that it has been codified and forms part of the provisions of **UNCLOS (Art 194(1) and (2))** on pollution of the sea and SOLAS from the safety and health angles. Maritime issues are therefore generally governed by international Conventions and Agreements. Note the operative word is "generally". We shall see from this paper that the legislators were not unmindful of existing international maritime obligations or of the propensity of established maritime nations to protect their domestic maritime industry while at the same time trying to stifle the growth of maritime industry in developing countries using subtle and sometimes not so subtle mechanisms.

The relevant conventions with respect to matters of exercise of jurisdiction, right of passage, safety, pollution, and certification are governed by UNCLOS, SOLAS, MARPOL 73/78, Salvage and Collision Conventions, ISM Code, ISPC, STCW etc. The relevant ones on international commerce are multilateral agreements such as the WTO Agreement, Bilateral agreements and Regional Agreements like ECOWAS.

#### **4. CABOTAGE ISSUES WITH INTERNATIONAL IMPLICATIONS**

We shall commence by identifying cabotage issues that have implications on Nigeria's obligations under the international/regional conventions and agreements for which it is a party. The issues that readily come to mind are:

- Protectionism
- Safety
- Salvage

## 4.1 SALVAGE

I deliberately choose to start with the less contentious issue like salvage. To be sure, a captain of a vessel is under a strict duty in international law to assist a vessel under distress or any type of marine peril - see Art 98 of UNCLOS and the Salvage Convention 1989. Any law therefore which will prevent a captain from discharging that duty will be in breach of that international duty. In recognition of this duty on seamen, the Nigerian cabotage law while reserving salvage for Nigerians states in section 4 (2) that:

*"Nothing ... shall preclude a foreign vessel from rendering assistance to persons, vessels or aircraft in danger or distress in Nigerian waters"*

Section 8(1)(a) exempts foreign vessels engaged in salvage operations from the total prohibition of vessels not owned by Nigerians to engage in any marine transport activities. IF or good measure and avoidance of doubts, Section 8 (2) provides that:

*"... the requirement for Ministerial determination shall not apply to any vessel engaged in salvage operations for the purpose of rendering assistance to persons, vessels or aircraft in danger or distress in Nigerian waters"*

With these exemptions one may wonder why salvage was even included in the services reserved for Nigerian operators. Maritime operators understand the reason and also appreciate the exemptions. The truth is that not all salvage operations are carried out for the purpose of saving life or rescuing a vessel in distress. Most are purely commercial activities with no emergency considerations. The Act therefore reserves such jobs for Nigerian owned and manned tug boats.

## 4.2 SAFETY

The Cabotage Act is indeed quite proactive in the aspect of safety requirements. Eligibility requirements for participation in cabotage trade require that both foreign and indigenous vessels meet international safety requirements. It is common knowledge that some of the vessels currently trading in Nigeria would not be allowed to trade in their flag states. Whereas the foreign ship owners are at liberty to employ substandard vessels in Nigerian waters because Nigeria has not domesticated some key international conventions, Sections 15 (1) (e) and (f) provides that eligible foreign vessels must

"... possess all certificates and documents in compliance with international and regional maritime conventions *whether or* whether or not Nigeria is a party to the conventions".

"... meet all safety and pollution requirements imposed by Nigerian law and any international law in force".

Under this umbrella, the Authorities can lawfully enforce MARPOL regulations, ISM Code, Port/Flag State Control Regulations etc which are all enactments pursuant to International Conventions not yet incorporated into our laws. Nigerian owned vessels are required under Section 23 (1) (f) to:

*"possess all certificates and documents in compliance with international and regional maritime conventions to which Nigeria is a party including all safety and pollution requirements imposed by Nigerian law and any international convention in force".*

To further ensure that only vessels considered safe are registered for cabotage, the Act places the maximum age for vessel eligibility at 20. It further reiterates that any vessel over

15 years must possess a valid *"certificate of registry and a certificate of seaworthiness from a recognized classification authority"* see Section 28.

Compliance of the Act to international maritime obligations in terms of manning is further demonstrated in its emphasis on *"qualified Nigerian officer or crew"*. It is a ground for grant of waivers if the Minister is satisfied that no *"qualified Nigerian officer or crew"* are available for the positions applied for. The certification under STCW comes into play here.

### **4.3 PROTECTIONISM**

Cabotage law in whatever form, whether liberal or strict is essentially protectionist. Some people therefore find it difficult to reconcile cabotage policy with the current worldwide trend of liberalization and opening up markets to foreign investors. A proper understanding of the Agreements which govern international trade and commerce and the practices obtainable in other countries who are also parties to those international trade agreement will be of great assistance in resolving the confusion.

It is important to note that there are two categories of shipping - Coastal and International shipping. Cabotage by its definition is coastal shipping and NOT international shipping. Cabotage regimes are therefore regulated by national laws albeit within the general powers preserved by international conventions and agreements.

#### **4.3.1 CABOTAGE AND UNCLOS**

UNCLOS, generally regarded as the grundnorm on laws of the sea in Arts 56 and 60, recognizes and preserves the right of member states to make laws regulating activities within their territorial and exclusive economic zone, and specifically mentions artificial installations. This is of particular interest to those who argue that cabotage law should not extend to offshore oil installations. In addition, other countries such as Canada define their coastal trade to include "exploration, exploitation or transportation of the mineral or non-living natural resources of the continental shelf". Spain specifically mentions carriage of petroleum products in its cabotage laws. Nigerian Cabotage law is no different in this regard.

#### **4.3.2 CABOTAGE AND WTO**

The principal international agreement of concern to most people is the World Trade Organization (WTO) Agreements. Trade in maritime transport services is one of the negotiation topics under the General Agreement on Trade in Services (GATS) in the WTO. The negotiations are done by the Negotiating Group on Maritime Transport Services (NGMTS). WTO Agreements and its negotiations thereof are restricted to international shipping, auxiliary services, access to and use of port facilities. Cabotage or coastal trade is not a negotiating topic and this means that countries are absolutely free to enact national laws on coastal trade and are under no obligations to member countries in that regard. Due to the strategic importance of cabotage in national economies the bastions of free trade in the WTO do not wish to liberalize that sector and have not included it under WTO negotiations.

Currently about forty-seven countries have some form of cabotage laws in their legislation. Among them are major industrialized countries including:

- United States (Merchant Marine Act of 1920 popularly known as "the Jones Act"; reaffirmed earlier cabotage laws dating back to 1789.
- Canada (the Coasting Trade Act of Canada)
- Germany (the Coastal Navigation Legislation);
- Spain (Law 27/1992 of 24th November on State Ports and the Merchant Marine)
- France, Italy; Norway, Finland.

Developing countries with cabotage regimes include Brazil, Mexico, Malaysia and Nigeria amongst others. Nigeria therefore does not act in isolation but is merely joining other countries in protecting its indigenous shipping industry by legislative intervention.

You may have heard talk that the EU has liberalized cabotage. Yes, to the extent that **EU Council Regulation (EEC) No 3577/92 of December 1992** opened the provision of cabotage services within the Union to other member states. It should be noted though that *"the beneficiaries of this freedom should be community shipowners operating vessels registered in and flying the flag of a member State"* In essence, coastal trade in EU countries is restricted to EU citizens. We should mention at this point that the United Kingdom does not have a national cabotage law but the stringent domestic regulations and requirements effectively bars participation from non-EU member States owned vessels.

I like to draw people's attention to the fact that WTO Agreement itself contains provisions designed to accord flexibility to developing countries and which allow derogation from the most-favoured nation (non-discrimination) treatment in favour of developing economies. **Art**

**IV (increasing Participation Developing Countries) of the WTO** advocates "progressive liberalization" that allows

- *"due respect for national policy objectives and the level of development of individual Members, both overall and individual sectors;*
- *appropriate flexibility for individual Members for opening fewer sectors, liberalizing fewer types of transactions".*
- *LDCs "only be required to undertake commitments and concessions to the extent consistent with their individual development, financial and trade needs or their administrative and institutional capabilities" ART X1 Marrakesh Agreements 1994.*

Decision of 28 November 1979 by Contracting Parties which continues to apply as part of GATT 1994 states that

*"contracting parties may accord differential and more favourable treatment to developing countries without according such treatment to other contracting parties"*

Even if cabotage was under negotiations in the WTO which it is not, Nigeria could very well be covered by these provisions in the WTO. The point here, is that Nigerian Cabotage law does not in any wise contradict its obligations under WTO. In point of fact, Nigeria specifically, excluded cabotage in its Schedule of Specific Commitments for Trade in Services deposited with the WTO on April 1994. Under the WTO Agreement, where there are no obligations and commitments, the issue of retaliatory measures and compensation to member States does not arise. It might also be of comfort to note that major WTO members

and major stakeholders of the Breton Woods institutions (World Bank, IMF) operate cabotage regimes.

#### **4.4 REGIONAL AGREEMENTS**

The major regional agreement which Nigeria is a party is the ECOWAS Treaty and its various Decisions of Heads of States. Nigeria is also a member of the Maritime Organization for West and **Central Africa (MOWCA)** which includes all ECOWAS States and some Central African States. Maritime issues of ECOWAS countries are negotiated under the auspices of MOWCA.

Demand for shipping services in the West and Central African region generates an estimated USD36.2b annually. Participation of MOWCA member countries in the enormous sub-regional maritime trade is very low or virtually non-existent. In 1999, the total tonnage owned by countries of West/Central Africa stood at 0.9 million dwt. Total tonnage of sub-Saharan African countries was 0.15% of the world total. No container ship was registered under this period. The entire region has no shipyard, only a couple of operational ship repair yards. The blockade by foreign operators against entry by indigenous operators is a common experience by all member countries. Recall the uproar and the anti-competition arguments about liner conferences, ostensibly employed by foreign operators against the implementation of the UNCTAD 40-40-20 cargo sharing formula which eventually contributed to the demise of that system. Now, the same foreign operators have emerged under the name of EWATA (Europe West Africa Trade Agreement) and the exclusionary, anti-competitive practices of liner conferences e.g. freight fixing are being practiced. Perhaps it is these aspects that the organizers of this seminar aptly describe as international maritime politics. No sooner had Satomar and Ecomarine, two private sector regional shipping companies engaged in feeder services emerge, did the foreign operators

who hitherto held the opinion that regional shipping service was unprofitable, establish a competing regional feeder service called Clipper CEC.

In recognition of these difficulties faced by indigenous operators in the sub region, MOWCA at the Preparatory Meeting of Experts for sub-regional projects in Abidjan 17-18 April 2002 took steps to implement Res No.

168/10/98 adopted at the 10th Ordinary session of the General Assembly of Ministers held in the Republic of Congo Oct 30, 1998 which mandated the formulation of a sub regional Cabotage Policy. A Draft Policy on Sub-regional Cabotage Policy was submitted and adopted in May 2002 by the Meeting of Experts on sub-regional projects and 2nd session of Bureau of Ministers from the Sub-region. The project on sub-regional cabotage policy is on-going and member countries are encouraged by bold step taken by Nigeria in enacting its Cabotage Legislation.

Regional cabotage is not new in Africa as CEMAC (i.e the regional body of Francophone speaking West and Central African countries) already has some cabotage content in its trade laws. The Association of African Shipping Lines in 2001 fully endorsed the development of sub-regional cabotage policy. The thinking in regional level is to encourage individual country cabotage laws and to allow citizens of member countries to participate in each other's domestic trade on the basis of reciprocity. Nigerian Cabotage Act is therefore in line with regional aspirations.

## **5. CONCLUSION**

I know some people in the audience would be disappointed if I conclude this paper without saying a word on the implementation of cabotage Act. We lawyers are wary of giving free consultancy but since my friends from the regulating authority are here in the audience, I

might as well give them something to go home with. Implementation and enforcement of Cabotage legislation will commence in four months. That is a very short time indeed. It is the custom in the private sector to plan well in advance. We have been bombarded by industry stakeholders with questions relating to implementation guidelines to which we have no response. We understand the slow machinery of government and its long winding chain of command but please take note of these concerns:

Section 52 of the Act, upholds the continued participation in cabotage of any vessel including foreign vessels with a valid coastal trade licence obtained prior to the coming into force of the Act under the terms and conditions of that licence. Effectively, coastal shipping services contract entered into this year for the duration of more than one year are exempted from cabotage laws during the currency of that contract. It is my understanding that the upstream and downstream sectors are pre-qualifying or have already pre-qualified. Anti cabotage interests could and perhaps have taken advantage of the absence of implementation guidelines in their pre-qualifying criteria and contract terms may include a duration which would effectively delay the full implementation of cabotage law. If that is the case, we would have ourselves to blame for it would be against the law of natural justice to vitiate such contracts.

The Authorities should not unwittingly play into the hands of pessimists who have prophesied that the Cabotage law will fail in its objective as did the Nigerian Enterprises Promotion Decree. If this were to happen, let it not be because we bit more than we could chew, that we were not prepared or lacked the will to implement the law.

Having said that, the truth is that, the success of cabotage law depends on everyone - private sector operators and the government. It is now time to put our money where our mouth is. The private sector would be better served to start positive engagements with their

bankers and stop this attitude of depending solely on government funding. Industry stakeholders should look beyond the oil services sector to other areas of opportunities opened up by this law. Indigenous operators should support the efforts of the NSCA-MCTF in acting as a watchdog for the industry against possible subversive activities. That is why in my opinion, private sector operators should not be involved in the implementation committees set up by government other than in advisory roles. They would definitely be hamstrung more so as most depend on foreign interests for the employment of their vessels.

The Cabotage Act presents another opportunity for this government to intervene and jumpstart the development of our indigenous tonnage. The shipping industry has for several years agitated for the enactment of cabotage legislation. The indigenous operators and other shipping service providers are grateful that the National Assembly and Mr. President responded to their needs and the industry is already abuzz with enquiries on new registration of vessels in preparation for the successful take-of the cabotage law.

Cabotage laws are the foundation of domestic maritime industry everywhere. It could evolve into the largest and most vital sector in the Nigerian merchant marine and a key link in the nation's intermodal transportation network. Cabotage when properly implemented will provide safe, reliable and cost-effective transportation options for Nigerian shippers, efficient maritime infrastructure and of course a vital role in the nation's economic and national security. In recognition of this strategic importance of the maritime industry, it is the suggestion of this Paper that Nigeria dedicates one day annually as the National Maritime Day preferably 30th April, the day Mr. President assented to the Cabotage Bill and it became a national legislation of the Federal Republic of Nigeria.

Thank you for your attention.

**MFON EKONG USORO, 00M**

