Nigerian Cabotage Regime: What Next?

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10/10/2012

Nigerian Cabotage Regime was introduced by the Coastal and Inland Shipping (CABOTAGE) Act No 5, 2003, Laws of the Federation of Nigeria. The aim of the Act is to empower Nigerian Shipping industry and give the indigenous shipowners the competitive edge over their well established foreign competitors. However, after eight years of singing the Act into law (since the Act took effect from 2004), it is not clear whether the Act has taken off or it is yet to take off. It has become one of the most criticised Nigerian Act in recent times; so much so that NIMASA[2] the Administrative home of Nigeria's maritime industry has not only condemned the Act but has contributed to the call for its amendment.

The Cabotage Act is a protectionist Act which has been used and is still in use by many other countries to develop not just their maritime industry but to industrialise their nation as a whole. It is an attractive alternative for developing nations. Japan in the 1950s and 1960s used it to rebuild their industrial structure. South Korea did the same in the 1970s; China is currently developing theirs with large state support funding alternatively, Croatia is privatising theirs. The important thing is that nations have realised the usefulness of developing via shipbuilding industry. As at 1976, the Maritime Administration study published in October, twenty-two (22) nations which had some form of Cabotage Laws[3].

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[2] Nigeria Maritime Administration and Safety Agency

[3] Maritime Administration United States Department of Commerce, Maritime Subsidies (1976) Australia, Brazil, Canada, Italy, South Korea, Pakistan, Panama, Venezuela, United States of America etc

Cabotage means short distance trading or haulage within a country. It could be via water transportation, rail, air or road[4]. Thus in the maritime sense, it is shipping between ports of the same country. It is usually excusive to the indigenous shippers of that country with limited waiver if any. They are common throughout the world, and are used to protect trade between two points in a single country. Just as you cannot fly British Airways from Lagos to Abuja or from Los Angeles to New York you cannot use a foreign ship to trade between two ports in the United States of America[5] or most other countries that practice Cabotage Law or any variance of it except under a waiver. Nigerian Cabotage Act is modeled along the US Cabotage Act[6]. The Act is one of the three modern pillars of US merchant marine[7]. Section 27 of the US Act requires that

> "*all merchandise transported between two ports within the jurisdiction of the US be carried by a US Flag vessel, built in the US, owned by US citizens and crewed by American merchant mariners*"[8].

The law ensures that the US has the vessels, seafarers and shipyards necessary to protect the national and economic security of the country. Today, the modern Jones Act fleet represents over half of all vessels over 10,000 deadweight tones flying the US flag. Of the 195 vessels in the US fleet, 105 of them are Jones Act compliant vessels operating domestically. This development has not caused the US to relax its Cabotage Law as they insist the Law is still very critical to the continued existence of the US Merchant Marine. According to the Merchant marine Congress, without it, US will lose their thriving domestic fleet, skilled seafarers (which are vital in times of war and national emergency) skilled shipyard labour required to build modern merchant vessels.

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[4] The Merchant Marine Act 1920, popularly called the Jones Act, www.wikipidia/wiki/cabotage
[5] United States of American herein after refers to US
[6] Supra note 4
[7] American Maritime Congress, the Jones Act- the Foundation of the Merchant Marine www.americanmaritime.org/about/jonesact.pdf
[8] Emphasis mine

Although the Jones Act increased the costs to the consumers by removing foreign competition that could have lead to lower freight rates and transportation costs; these savings are more than made up by the loss of tax revenue, increased risk to the environment, costs to the federal government of maintaining the ships and jobs necessary to protect the Americans in times of war and national emergency[9]. Thus, Cabotage Acts are the foundations on which the modern maritime industries of most maritime countries are built.

The Act is an economic instrument which is flexed depending on which area of the economy needs attention. Recently, the government of India had to relax their Cabotage regulation to allow foreign owned and operated ships transport containers to and fro Vallarpadam International container transshipment terminal in the port of Cochin. This is to attract cargo destined for Indian ports which are presently being transshipped to Sri Lanka. The relaxation will last for a period of three years to enable the government and India shipowners make the necessary adjustments[10]. Prior to this, in 2009, the Malaysian government also relaxed their Cabotage regulation to promote containerized transshipment cargo at the port of Tanjung Pelepas and particularly to help their shippers[11]. Thus, as a protectionist law, economic consideration is its highest priority hence it is subject to frequent adjustment for the benefit of those it stands to protect.

According to Hon. Ibrahim Zailani (who is the executive director, maritime labour and Cabotage services at NIMASA and was a member of the National assembly that passed the Cabotage Act into law), the challenges of the Nigerian Cabotage Act are multifaceted. The most obvious he says is that the Act was built on nothing and it is trite that anything built on nothing will not stand[12]. He concludes that the four pillars of Nigerian Cabotage Act were responsible for the unenforceability of the Act since Nigeria was neither a ship building nation nor has Nigeria

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[9] Supra note 7

[10] India Eases Cabotage Laws at Port of Cochin, Journal of Commerce, www.joc.com/container-shipping/india September 6 2012

[11] www.ametuniv.ac.in/new%20attachments/final%20file%20

[12] UAC V Macfoy (1961) 3 All E.R 1169@1172

trained any seafarer since 1996 when Nigerian National Shipping Line was dissolved. He further stated that with these challenges, the house committee on maritime transport has started the process of amending the Cabotage Act. Faced with these challenges, others[13] have described the Nigerian waters despite the Cabotage regime as a feasting ground for foreign shipowners who reap stupendously from the inability of the locals to carry Nigerian cargo. For Captain Thomas Kemewerigha, President, Nigerian Merchant Ships Senior Staff Association, the undoing of the Act is the waiver clauses which allows foreign shipowners to step in where locals do not have the required capacity to carry out the jobs; thus, the Act was dead before it arrived as both locals and Nigerian maritime industry did not have what it took for the Act to commence. As earlier stated, the Act was modeled along the Jones Act of US. Although the Act was not contemplated in the same circumstance, as US already had an existing ship building yard and trained men, the Act has been long overdue for Nigeria; the Act aims to force industrialisation on not just the maritime industry but Nigeria as a nation. The Act is both important and timely; there is never a better time for industrialisation which naturally comes with hitches. The Act is hinged on two main parts which are part ii and part iii of the Act.

Part ii of the Act (sections 3-8) contains the Cabotage pillars; particularly at

section 6, whole ownership by Nigerian citizen

section 7, exclusive manning by Nigerian citizen and

section 8 building or assembling the vessel in Nigeria.

While part iii of the Act (sections 9-14) contains the waiver clauses particularly

section 9, waiver on wholly Nigerian ownership

section 10, waiver on manning and

section 11, waiver on Nigerian built or assembled vessel.

The fear in the industry is that the industry is not ready for the revolution introduced by these two parts of the Act. However, in US where the Act was introduced, although the circumstances

[13] The Nigerian Voice, www.thenigerianvoice.com/nvnews/8/1266/1/Cabotage-regime January 30 2012

are not the same, things still changed dramatically; cost of freight was increased because foreign competitors were removed but the benefit of the Act[14] outweighed the increase and the nation was prepared to bear the short term effect. Like every maritime nation and with the advantage of being an oil producing and exporting nation, the Nigerian maritime industry has the potentials of boosting the nation's economy. A vibrant maritime industry is one of the world's largest employers of labour as it attracts professionals, highly skilled, semi-skilled, unskilled, religious, social and academic labour force. The industry is famous for its direct and ancillary development it imposes on its host economy.

For example a shipbuilding industry offers a wide range of technologies employs significant numbers of workers and generate income as the industry is global. With a ship building industry, all classes of engineers will be put to good use; creating jobs and introducing some measure of stability to the economy. Pressure will be reduced from the oil sector which is currently the preferred means of individual job and revenue for the government; there will be a reduction in the unemployment, employment and job satisfaction level. Other classes of jobs would develop such as management, administration, economics, child-minding and so on. The current situation of capital flight will reduce; youth agitation in the Niger Delta, brain drain situation in the various professional levels will also reduce. All these will immediately translate to increased income and company tax for the government, the stability in the economy may improve on the current peace situation and may lead to less crime in the nation. The demand from the industry will put pressure on the power sector, the road and rail sector for speedy development, there will be the need to open all our inland water ways for domestic transportation. The resultant effect on our roads will be limited road accidents and limited traffic leading to long lasting roads, preservation of cargo, reduced delay in cargo delivery, preservation of contractual relationships and so on.

It will be necessary to train crews alongside shipbuilding as the Act requires that a Cabotage ship should be built or assembled in Nigeria and manned by Nigerians. Without this, we would

[14] Supra note 7

not have fully fulfilled the requirement of the Act. Apart from this, there is the danger in allowing foreigners man our inland waters; they increase security risk during national emergency and war as they are already used to the local territory where they trade. If this damage is not curtailed as soon as practicable in times of national security, we may be left unprotected. This also affects our economic security as trained locals can benefit in terms of job and financial remuneration.

Nigerian Cabotage Act is aimed at building indigenous capacity in maritime tonnage, infrastructure, labour and finally taking full control of our Cabotage market. The greatest asset of the industry is its lack of capacity, facility such as a shipbuilding yard and viable crew training institutes. What this means is vast opportunities for investors to look into the maritime industry as well as other industries to translate them from none to wealth. Individuals with idle resources and inactive capital should be encouraged to participate alone or with the government to create the necessary industrialisation the industry needs. The Cabotage Act should have a limited period for the operation of its waiver clauses[15]. The limitation period should be the time frame for the development of the industry. The government can consider a partnership as it is currently done in china or leave the industry entirely open to investors as it is done in Croatia and other countries. More sensitization should be done on the need to accept the Act as it currently stands with little amendment on the waiver clauses and the need to develop the industry in line with the Act as other countries including US has done than on the need to amend the Act. This and more will ensure a stable investment, working and financial climate for Nigerians and an alternative income for the government.

For further studies see

Maritime stakeholders call for review of Cabotage Act www.guardiannewsngr.com/index.php? Wednesday 04 April 2012

Exploiting potentials of the maritime industry through the Cabotage Law, www.businessdayonline.com/index.php/analysis Sunday 04 January 2009 Ngozi Uche

[15] India and Malaysia experience see supra notes 10 and 11

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