RE-EVALUATING LOCAL CONTENT AND WAIVER PRINCIPLES IN THE NIGERIAN CABOTAGE REGIME: A COMPREHENSIVE ANALYSIS

Aaron OLOGE*

Abstract

The principal aim of the CABOTAGE Act as deduced from the long title to the Act is the promotion and development of indigenous tonnage, invariably the entrenchment of local content policy. Other objectives of the cabotage policy such as the establishment of the Cabotage Vessel Financing Fund, as well as the restriction of foreign vessels in cabotage trade are geared towards the realisation of that core aim. Furthermore, the literal interpretation of section 3 of the Cabotage Act means no more than a total domestication of cabotage trade in the hands of the citizenry in aspects of full beneficial ownership of vessels, manning responsibilities, build procurement, as well as flag registration to be domiciled in Nigeria. However, the influence of the localisation requirement has been greatly undermined by the waiver provision. This paper examines the impact of the waiver provision on the local content policy initiative and found that it faces some inherent constraints. It therefore makes a number of recommendations and contributions to the existing calls for an amendment to consider a right of first refusal in favour of domestic shipping interests and the optimal development of the indigenous Nigerian Maritime University for the training of Nigerian seafarers.

Keywords: Cabotage waiver policy, Maritime, Local Content Laws, Nigeria.

Introduction

The practice of cabotage is both old and contemporary economic approach for justifying intervention or restriction to achieve certain results. In whatever policy framework, it is seen as an acceptable tool for achieving set economic goals, especially where competition is unfair and dominance is prevalent as in Nigeria. The practice, such as the reservation of all or part of national market opportunity for national flag ships or aircraft, is justified for political, socioeconomic, geo-cultural and security reasons.[1] This underscores protectionist ideology; clearly, coastal trade is isolated from world politics of trade liberalization and opening up markets to foreign investors. Accordingly, World Trade Organization Agreements (WTO) and its negotiations at various rounds 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.[2]

As noted above, protectionism is the hallmark of coastal trade, and as we may see later, trade liberalization is merely economic development mechanism via the waiver system to enhance growth in the maritime subsector. Thus, a vessel other than a vessel wholly owned and manned by a Nigerian citizen, built and registered in Nigeria is prohibited from engaging in cabotage trade in Nigeria**.**

* **Lecturer, Department of Commercial and Property Law, Faculty of Law, Delta State University, Oleh Campus; E-mail: aologe@delsu.edu.ng; Phone Number: +2348067158259**

1. Ndikom O, *Nigerian Cabotage Act 2003: The Journey so Far*. Paper presented at Management of Cabotage Operations Course Organized by the Nigerian Institute of Transport Technology, Zaria (July 26th - 30th, 2010), p. 2.
2. Usoro M E, *Cabotage Policy and International Maritime Politics: The Nigerian Coastal and Inland Shipping Act 2003*; www.paulusoro.com < accessed on 12/11/2017>

The topmost priority in cabotage regimes all over the globe has been the preservation of national interest in the defence and security of its territorial waters. A phenomenon of dearth in national tonnage detracts from the integrity of any littoral state in times of national or international emergency. Foreign owned vessels in such times will be unwilling for security and economic reasons to come to Nigerian coasts, thereby presenting devastating security implications.[3] The Merchant Marine Act[4] otherwise called the Jones Act which regulates maritime cabotage in America houses hundreds of ships and thousands of skilled sailors and restricts domestic cabotage to American flagged ships. It guarantees for American fleets wide range of privileges which have been termed by foreign companies to be unfair. The justification for the legal regime has always remained availability of large fleet of ships when the American nation requires it. This strict cabotage regime has obvious advantages in terms of national security, economy, commerce, among other things.[5] Prior to the enactment of the Cabotage Act in 2003, there had been legal regime for regulation of coastal trade in Nigeria. The Merchant Shipping Act[6] allowed ships owned by non- Nigerians to trade in or from Nigerian waters. The National Shipping Policy Act[7] provides beyond coastal and inland waterways trade, regulations for deep sea shipping and international trade. Recent developments in maritime security breaches despite the existence of the Cabotage Act call to question the propriety or otherwise of the enforcement of the current policy in Nigeria.

Domestication of Cabotage Trade

The Coastal and Inland Shipping Act of 2003, also known as the Cabotage Act is an economic legislation passed by the National Assembly to equip Nigerians to own vessels and develop needed capacities in the maritime industry. In view of the above, the law restricts the use of foreign vessels in coastal trade, it promotes the development of indigenous tonnage so as to achieve capital formation in cabotage trade, it establishes a Cabotage Vessel Finance Fund, the transfer of required technology and development of maritime infrastructure, the conservation of foreign earnings and transfer of technical skills and generation of employment in the country.

The Act has a total of nine parts. Part I covers short title and interpretation sections, restriction of vessels in domestic coastal trade is provided under Part II, waiver regime in Part III, license to foreign vessel under Part IV, registration is provided in Part V, enforcement is provided under Part VI, offences under Part VII, Cabotage Vessels Finance Fund under Part VIII and miscellaneous under Part IX. In all, it contains fifty five sections.

Cabotage Trade

Cabotage in Nigeria means maritime transportation activities including the exploration, exploitation and transportation of the mineral or non-living natural resources. It also includes transportation of persons and goods whether of a commercial nature or value.[8] According to Olarewaju,[9] services that qualify as cabotage trade in include:

---

3 Talatu O. Ocheja, 'Carriage of Petroleum Products: Protection of Nigerian Shipping Companies under the Cabotage Act', In Epiphany Azinge and Osatohanmwen O. Eruaga (eds.), *Cabotage Law in Nigeria*, (Nigerian Institute of Advanced Legal Studies, 2012), p 115.

4 Merchant Marine Act, 1920 (P. L. 66-261)

5 Emma O. Omuojine, 'Nigerian Cabotage: Its Policy and Prospects', <https://www.scribd.com/doc/24383693/Nigerian-Cabotage-It-s-Policy-Problems-Prospects> <Accessed on 4th September, 2017>

6 Merchant Shipping Act, No. 27, 2007

7 National Shipping Policy Act, 1987

8 See the Cabotage Act, 2003 S. 2; Animi Awah, 'General Overview of Coastal and Inland Shipping Act', In Epiphany Azinge and Osatohanmwen O. Eruaga (eds.), *Cabotage Law in Nigeria*, (Nigerian Institute of Advanced Legal Studies, 2012), p. 60.

9 Olarewaju, A. Adegoke, 'Cabotage Regime in other Maritime Jurisdictions: A Comparative Study', In Epiphany Azinge and Osatohanmwen O. Eruaga (eds), *Cabotage Law in Nigeria*, (Nigerian Institute of Advanced Legal Studies, 2012), p.33.

a. The carriage of goods and passengers originating from one coastal inland point (it could be port, terminal, jetties, pier etc.) to another point located within Nigeria.
b. The carriage of goods and passengers by sea in relation to the exploration, exploitation, or transportation of the mineral or non-living natural resources in or under Nigerian waters.
c. The carriage of goods and passengers on water or underwater by installations.
d. The carriage of passengers originating from a point in Nigeria destined for Nigeria but transiting through another country then back to Nigeria for discharge.
e. The engaging by vessel in any other marine transportation activity of a commercial nature in Nigerian waters. These include towage, pilotage, dredging, salvage, and bunkering etc.

It must be pointed out that activities such as passenger ferry services, dredging, fishing, shipbuilding, and repair have not received proper attention and development as much as carriage of petroleum product and ancillary service. Ocheja, in his work[10] wherein he canvassed for protection of Nigerian shipping companies in the carriage of petroleum products, argued that section 5 which prohibits foreign vessels from engaging in the carriage of materials, petroleum products or supply services to and from oil rigs, platforms and installations whether offshore or onshore or within any ports or points in Nigerian waters does not touch on crude oil. However, it is submitted that if the Cabotage Act is rightly enforced, local shipping companies would be adequately protected.

Towage

Towage is one of the cardinal trade activity prohibited under the law. Towage is the act or service of towing ships and vessels, usually by means of a small steamer called a tug. A towage contract is an agreement whereby one party (tug owner), agrees to provide the service of towing or pushing as well as pulling of a vessel to the other (the ship owner). In practice, towage contracts requires the basic elements of offer, acceptance, consideration, intention to create legal relations etc. they are generally in standard forms; the main obligation is that of tug and tow. However, it must be noted that the practice of towage is the provision of towage service by the use of best endeavour and not the successful completion of towage to the named or assumed destination. Thus, a towage contract may be superseded and converted into salvage service.[11] This is because to act otherwise might lead to the doing of that which is humanly impossible, particularly in instances of radical change of circumstances. Therefore, a towage contract may be frustrated by a substantial change in circumstances. The key thing is that it must be impossible to carry out the contract not merely being difficult than was expected so as to justify the application of the common law rule of *lex non cogit ad impossiblia*. According to Awah,[12] the distinction is important because if the changed circumstances are brought about by breach of contract the contract continues in force; and ordinarily frustration discharges both parties from their obligations. Consequently, where towage contract becomes frustrated, the services rendered subsequently qualify as salvage services which under section 4 (2) of the Cabotage Act, 2003 allows foreign vessels to render such services to vessels in danger or distress within Nigerian waters.

Salvage

Salvage services are voluntary operations carried out with the intention of saving a vessel, its cargo and crew from grave danger and maritime peril or minimize damage to the environment. In international law, an obligation exists for vessels under distress to be assisted. See Art 98 of

10 Ocheja, *op cit.*, p. 110
11 *Minnehaha* (1861) 15 Moo PC 133, 15 ER 444.
12 Awah, *op cit*, p. 66

UNCLOS.[13] Salvage may or may not necessarily be carried out under a contract. However, it entitles a tug owner to make a claim since the commercial nature cannot be overlooked in spite of the duty under international law and copious provision under the Cabotage Act of 2003. Section 4 (2) of the Cabotage Act expressly lifts prohibition against foreign tug in respect of salvage operations. Furthermore, the law in section 8 (1) (a) lifts the necessity for requiring the determination of the Minister in respect of salvage services by foreign vessels. The essence of the restriction in section 4 (1) is clearly in recognition of the pure commercial aspect of salvage. Obviously, there are situations requiring salvage services which may not be for the purpose of saving life or rescuing vessel in maritime peril. Such situations are primarily commercial with no emergency considerations.[14] Therefore, it is submitted that the waiver principle should be applicable where salvage is devoid of life saving emergency or pollution prevention emergency.

It should be noted that the scope of the restriction on foreign vessel is not total. This paper concedes to the argument of Ohio,[15] because vessels classified as foreign vessels may be allowed to participate in coastal trade if they fall under any of the special exemption situations provided in the Act which includes vessels ownership[16] seamen on board a vessel as well as the requirement for the vessel to be built in Nigeria on application made to the Minister. See sections 9, 10 and 11 of Cabotage Act, 2003; see also Clause 5.3 of 2007 Revised Guideline. It must be emphasised that the Minister is required to satisfy himself in the case of foreign owned vessels that there is no wholly owned Nigerian vessel suitable or available to perform the specified activity, in the case of foreign seamen that there is no qualified or available Nigerian officer for the position and finally he must satisfy himself that there is no ship building company in Nigeria that has capacity to construct the particular vessel.

In our discussion on salvage above the position of the law of a ship in maritime distress or emergency was presented as an exception to the cabotage restriction rule. In addition, a foreign vessel may be allowed in coastal trade in Nigeria in the following circumstances. To wit;

a. Marine pollution emergency or any threatened risk with the approval of the minister or any other relevant government agency.
b. Ocean research commissioned by the department of fisheries or a department responsible for such research.
c. Marine scientific research with the consent of minister of foreign affairs or under the sponsorship of foreign government.[17]

Waiver Principle and its Applicability

The thorny issue in the cabotage practice is that the waiver regime and exemptions when considered side by side with the restrictions make the waiver regime and exemptions much more significant than the restrictions which ought to be the primary aim of the policy practice. Although, the waiver principle is internationally recognised system that is based on the principles of non-availability, reciprocity or bilateral agreement, for instance, waivers are granted in Spain under non availability Spanish/EU ships.[18] In Germany it is granted to non EU ships on basis of non-

13 See also the Salvage Convention of 1989.
14 Usoro M, *op cit*.
15 Ohio, *op cit.*, p. 93
16 *The Araz* (No.1) NSC Vol.6 P116; *The Araz* (No2) NSC Vol.6 P149; and *The Araz* (No3) 1995, 5 NSC 389 at 402. It requires all 64 shares to inhere on a Nigerian and such interest should be indefeasible; Once indigenous capacity is developed, it could be enhanced through research and innovation to even build armoured and ballistic vessels specifically developed to suit Nigerian terrain. Available at http://www.nimasa.ng. <accessed on 10th December, 2017>
17 See S. 8 (1)
18 See Spain Law of State Ports and Merchant Marine 27/1992. Art. 81.

availability or if available at very unfavourable conditions as well as on basis of reciprocity.[19] In Greece it is granted on basis of reciprocity,[20] while Finland and Sweden has bilateral agreements with Norway for waivers in respect of cabotage trade in 1997 and 1989 respectively.[21]

For the avoidance of doubt Cabotage Act provides in sections 9-11 thus:

9 The Minister may on the receipt of an application grant a waiver to a duly registered vessel on the requirement for a vessel under this Act to be wholly owned by Nigerian citizens where he is satisfied that there is no wholly Nigerian owned vessel that is suitable and available to provide the services or perform the activity described in the application.

10 The Minister may on the receipt of an application grant a waiver to a duly registered vessel on the requirement for a vessel under this Act to be wholly manned by Nigerian citizens where he is satisfied that there is no qualified Nigerian officer or crew for the position specified in the application.

11 (1) The Minister may on the receipt of an application grant a waiver to a duly registered vessel on the requirement for a vessel under this Act to be built in Nigeria where he is satisfied that no Nigerian shipbuilding company has the capacity to construct the particular type size of vessel specified in the application.

(2) The Minister shall immediately after the commencement of this Act compile and publish information on the type, size and characteristic of vessels and craft which are built in Nigeria.

The reality in Nigeria as encapsulated in sections 9-11 by the use of the wordings 'no wholly Nigerian owned vessel that is suitable and available, no qualified Nigerian officer or crew, and no Nigerian ship building company for the capacity or particular type and size of vessel' has been fraught with serious challenges. The first challenge is the suitability and availability clause under section 9, by all intent and purposes, there is general consensus that Nigeria does not have sufficient domestic capacity in both the ownership and infrastructural aspects of shipping. It is capital intensive venture and one which requires ever changing technology which only foreigners can cope with; therefore, indigenous companies may be unable to compete whenever suitability and availability is in issue.

Exploring the Need to Realize Local Content Demands

This clearly is the reality local firms have been grappling with especially in the oil industry where award of contract for carriage of petroleum and other wet cargo comes with stringent requirement for standards and capacity which the local firms cannot meet. Perhaps, the cause of action in the case of *The Incorporated Trustees of Indigenous Ship Owners of Nigeria and Ors v. The Union Grace and Ors*.[22] and the case of *The Incorporated Trustees of Indigenous Ship Owners of Nigeria and Ors v. The MT Torrent and Ors*.**[23]** should be able to clarify the condition of local operators in Nigeria. In both cases the plaintiffs sought for similar reliefs. The plaintiffs sought for a declaration that the engagement of 1st defendant, a foreign built and crewed vessel owned by 2nd defendant, a foreigner involved in the carriage of petroleum products between Nigerian ports without license, registered or being granted ministerial waiver or approval was illegal and contrary to the Cabotage Act. The Federal High Court eventually struck out the cases for coming via wrong originating

19 See Amended German Law of Coastal Shipping. Art. 2.2 and 2.3

20 See Greece Code of Public Maritime Law. Art. 1696.

21 See Commission for the European Communities, *Fourth Report on the Implementation of Council Regulations* 3577/92 applying the principle of freedom to provide services to maritime cabotage 1999 - 2000, Brussels 24th April, 2002, cited by Ofuani A I, *op cit.*, p. 128

22 Suit No.: FHC/L/CS/990/09 Judgment delivered on 24/9/09 by Sani J.

23 Suit No.: FHC/L/CS/1011/09 Judgment delivered on 14/10/09 by Sani J.

process of originating summons instead of writ of summons. This is a clear case of allowing technicalities to stand in the way of substantial justice and erosion from the promotion of indigenous participation in cabotage trade which is the thrust of cabotage regime in Nigeria.

On the issue of availability of qualified officers and crewmen, it can be argued that since the advent and operation of Nigerian Seafarers Development Programme[24] by NIMASA one thousand, forty five of seafarers have been trained both locally and internationally and with the planned take off of the Nigerian Maritime University Okerenkoko, the number is expected to be on the increase. However, a lot of those trained have not been engaged as a result of failure in enforcement. In addition, there appears to be active connivance between the foreigners and Nigerian regulators in the issuance of waiver for vessels and expatriates. Nonetheless, a major twist is the allegation that seafarers in Nigerian institutions are not well trained, consequently, ship owners are wary to entrust their vessels worth millions of dollars in incapable hands.[25] However, with sea time training Nigerian seafarers will be more competent.

Ship building and repair remains one area where investments should be encouraged and grant of waiver made. It is common knowledge that Nigeria[26] lacks the necessary capacity for ship building thereby attracting new investments. The concern here is the content and quality of the memorandum of understanding entered in order to develop this area. The objectives of any such memorandum of understanding such as ABG Indian shipyard[27] should be able to achieve the following in order to prevent losing an average of N26 Billion annually to foreign dry docking companies:[28]

Firstly, it should be able to achieve an accelerated industrialization of maritime infrastructure in line with the local content cabotage policy. Secondly, it should pursue the promotion of a private sector-led economy. Thirdly, it should it should focus on attracting investment generation of both local and foreign direct investors to the country. Fourthly, it should have a provision of employment opportunities for Nigerian seafarers, and lastly, strengthening international cooperation.

In pursuance of the aforementioned objectives, an investor should be engaged for developing ship building and maintenance complex project with a consideration for the creation of Special Purpose Vehicles (SPV) for the purpose of realizing the objectives of the projects. This should be followed by an evaluation of proposed project and determination of same by a comprehensive feasibility

[24] NIMASA NSDP, http://nimasa.gov.ng/press-center/post/nsdp-seatime-training-programme-on-course-dg-nimasa-maritime-capacity-development-on-course-experts. <accessed on 15/12/2017>. It must be noted that NIMASA on 19th December, 2017 gave automatic employment to 20 beneficiaries of Nigerian Seafarers Development Programme cadets that passed out with distinction. It has also sponsored 150 cadets to Arab Academy of Science, Technology and Marine Transportation in Alexandria, Egypt and 89 to South Tyneside College, United Kingdom for on-board sea time training. Available at http://www.nimasa.gov.ng/press-center/post/nimasa-offers-automatic-employment-to-20-cadets-with-distinction-commences-first-phase-of-sea-time-training-hails-amaechis-commitment-to-maritime-growth <accessed on 20/12/2017>

[25] Tunji Brown, 'Nigerian shipowners are going through difficult times' ships & ports April 4, 2016, http://shipsandports.com.ng/nigerian-ship-owners-are-going-through-difficult-times-tunji-brown/ <accessed on 30/11/2017>

[26] Nigerdock has a 25,000DWT graving dock, a 3,500DWT floating dock, multiple purpose workshops. See www.nigerdock.com accessed on 15/12/2017.

[27] Ship building and repair companies from India and South Africa have indicated partnership interest in Nigeria. Pp. 82 - 84.

[28] It has been revealed that 80% of vessels operating in Nigerian waters carry out both minor and major dock repair works elsewhere. Awah A, *op cit.,* p 83.

study, cash flow analysis and final stake holders meeting to determine the actual liabilities and other cost implications of the project(s).

The determination of exact recoupment of investment period after proper evaluation; which may be between 25 - 30 years should also form part of the investor's preoccupation. The project to be executed with the funds sourced through Treasury Bills/Public and Foreign Direct Investment (FDI) should be covered under agreement and supported by Public Private Partnership (PPP) Build Own Operate and Transfer (BOOT) and other related Joint Venture Agreements (JVA). Respective parties should undertake to source and secure the requisite funding required for the planning, construction, development, completion, commissioning and operation of the projects in accordance with the terms and conditions as may be agreed upon.

However, respective parties may have areas of cooperation. In furtherance of the objectives of any given MOU, the parties should spell out areas they agree to cooperate for instance. The investor should construct the project for the purpose of reducing the state's dependence on foreign vessels and serve as a complement to existing facilities as well as the development of localisation drive and to also create market for African region and in international markets. An investor is usually granted the right to review existing feasibility study to determine whether the development, construction and operation of the project is viable. If the development of such facilities proves to be feasible, the investor through the SPV be granted the exclusive right (either by a lease hold for 25 - 30 years or free and unencumbered clear title) to the property or any agreeable arrangement to manage the engineering, procurement, fabrication, construction, refurbishing, installation, commissioning, management and operation of the complex and for the operation of the facilities.

The investor should have full rights to autonomously operate as a strict business concern in accordance with acceptable international standard, including the ability to set prices and charges for installation of utilities, services, products, and such other consideration as customary with the industry in which the project operates. The investor should include a minority membership from public and other local partnership who should be involved in the procurement, commissioning and decision making process. The financial institutions and the investor will take engineering and construction decisions based on industrial standard principles only, and no other basis.

The ownership structures should be determined in a meeting with all the stakeholders and should be shown in ratio. Representation of the parties on the board of the SPV should be in the same proportion as the shareholding of the parties thereto. However, the MOU should be governed, construed and enforced in accordance with the laws of Nigeria, and relevant International Convention in the settlement of disputes. In the event of any dispute arising from the breach of or any question of any of the terms of the MOU, the parties should in the first instance negotiate in good faith to settle the matter amicably and if the parties are unable to settle the matter within three months of the occurrence of dispute, the matter should be submitted to arbitration panel with each party appointing one arbitrator, and a third arbitrator appointed jointly by the consultants. The Arbitral Proceeding should be held in accordance with the Arbitration and Conciliation Act, or any successor.

It should be noted that the provisions in sections 12 – 21 of the Cabotage Act represents the true extent of inclusion of Nigerians in the participation of the domestic maritime trade under the Cabotage Act. Section 12 determines that in the granting of waiver, the minister shall in the first instance consider a joint venture with Nigerians holding an equity participation of 60% free from any trust or obligation whatsoever in favour of non-Nigerians.

Challenges of Localisation Policy

It is submitted that while joint venture a panacea to the participation of indigenous shipping firms, it does not ipso facto guarantee or favour indigenous participation in view of the fact that 60% equity shareholding is not just a meagre 15% cabotage vessel finance contribution (as envisaged by the law) which in reality is ordinarily herculean for local operators, how then does the Nigerian businessman effectively source for his participation when one considers that the capital in dollar equivalent cannot effectively be obtained from financial institutions in Nigeria and when one considers the difficulty in servicing loans amidst scarcity and irregularity of job opportunities?[29]

Ohio[30] rightly said, foreigners can safely frustrate the restriction provision by focusing on registration based on suitability of their vessels by virtue of section 12 (b) provided it has an office in Nigeria, it complies with the demands of relevant authorities, has all required valid certifications in line with international standards, and obeys all safety and pollution regulations. Therefore, section 12 (a) and (b) are ambiguous and of no meaningful help to indigenous operators because any vessel registered in Nigeria is either a vessel which is a Nigerian vessel or a foreign vessel. Foreigners can frustrate the restriction provision by refusing to partner with Nigerians under joint venture agreement and rather focus on satisfying the requirements which are demanded for their own registration under the Act.

Section 13 determines that the grant of waiver at any time shall not be more than one year. In the same vein section 17 determines that a license under the Act shall not exceed one year. These provisions are for all intent and purposes purely revenue generation save in their requirements of valid certificates and documents. Section 14 also provides that:

(1) The Minister shall immediately after the commencement of this Act, establish and publish the criteria and guidelines for the issuance of waivers under this Act.
(2) The waiver system provided for under this Act may be reviewed after five (5) years from the commencement of this Act by the National Assembly.

The 2007 Guidelines makes provisions for the issuance of waivers, these Guidelines also provides for the criteria and guidelines for the issuance of licence.[31] However, it submitted that the operation of the regime now merits review since the prohibition regime is unlikely to neither assure local transport capability nor inhibit excessive foreign influence in domestic transport services due to the flexibility that has been attached to the restriction. Consequently, it is argued that the abuse of the waiver system may continue unabated, in the absence of review by the legislature.

The combined provisions in sections 15 and 16 are to effect that grant of licence to foreign vessels must adhere to terms and conditions stipulated. Foreign vessels must also adhere strictly to anti-pollution and safety regulations. The Minister under section 18 also wields the power to suspend or cancel or vary the terms and conditions of a licence in the following instances:

(a) the owner or master of the licensed vessel is convicted of an offence under this or any other Act of the National Assembly relating to navigation or shipping;

---

29 *The Araz* (No.1) NSC Vol.6 P116; *The Araz* (No2) NSC Vol.6 P149; and *The Araz* (No3) 1995, 5 NSC 389 at 402. It requires all 64 shares to inhere on a Nigerian and such interest should be indefeasible; Once indigenous capacity is developed, it could be enhanced through research and innovation to even build armoured and ballistic vessels specifically developed to suit Nigerian terrain. Available at http://www.nimasa.ng. <accessed on 10th December, 2017>

30 Omiunu Ohio, 'Restrictions of Vessels for Domestic Trade under the Nigerian Cabotage Act: Extent and Scope.' In Epiphany Azinge and Osatohanmwen O. Eruaga (eds.), *Cabotage Law in Nigeria*, (Nigerian Institute of Advanced Legal Studies, 2012), p. 99

31 S. 20, Cabotage Act, 2003. See also Clause 4.5 of the Revised Guidelines 2007.

(b) there has been a contravention of or failure to comply with any term or condition to which the licence is subject to; or
(c) it is expedient to cancel, suspend or vary the licence or permit for reasons of national or public interest.

Section 19 provides that where in the determination of the Minister it is deemed expedient to grant a licence in conformity with the Act, a tariff shall be imposed. The tariffs are subject to annual review by the Minister. The figures may be reviewed to introduce punitive and deterrent parameters as may be found necessary. See also Clause 9 of 2007 Implementation Guidelines. Finally, section 21 further prohibits foreign owned and crewed vessels from participating in domestic coastal trade without licence and due authorisation.

The Way Out

The current situation of indigenous ship owners has led many to canvass for review of the waiver system and to replace it with right of first refusal which is expected to give indigenous companies considerable advantage when bidding processes are undertaken. Stakeholders have also recently considered the adoption of Cost Insurance and Freight (CIF) instead of Free On Board (FOB) which will enable and boost indigenous ship owners to lift crude in Nigeria instead of foreigners.[32] The National Shipping Policy Act formulated national insurance policy under section 14 (3) restricting export and import on C and F Terms and FOB respectively to government or public sector contracts alone to which Nigerians or a Nigerian registered companies while all private sector contract are excluded from benefit of the policy. The intervention by stakeholders would avert grave challenge hitherto posed to indigenous companies to compete with foreign companies who are by far better placed in the market. Shell Nigeria in her 2016 report published in 2017 announced it awarded 94% of their total number of contracts to Nigerian in 2016. However, the report conceded that the targets can prove challenging in a technical industry in which skills and capacity usually take time to acquire.[33]

Flowing from above, it is argued that implementation of cabotage regime depends on strong political will in order to realise primary intention of the lawmakers which is to restrict foreign participation. The grant of waivers must not scuttle local content development and participation, it must go beyond mere revenue generation as being decried by some stakeholders, and adopt international principles of reciprocity. It is also suggested that rather than train seafarers abroad our maritime institutions can hire experts to help develop Nigeria's capacity and avoid loss of huge foreign exchange. Moneke[34] also suggested that where the Minister has decided that a waiver be granted, the waivers should be granted, first to wholly owned Nigerian vessels, secondly, to bareboat chartered vessel, joint venture owned vessel, and foreign vessel that have complied with the provisions of the Act. He stressed that the priority suggested was by implication the general intendment of the Act even though not expressly provided. He also maintained that the revised guideline, as opposed to its predecessor does not provide the procedure and requirements for renewal of licenses as it has done in the case of waivers. This he submitted that the process of renewal of license would be similar to the procedure for the initial application, and perhaps less complicated. Therefore, it is submitted that the Cabotage law needs a complete overhaul amending the Cabotage Act in order to achieve true Cabotage policy which will address the waiver system, and provide clear and adequate guidance as to application and renewal procedure for registration, licensing and exemption requirement of the Act.

---

32 Solomon Epele, 'Crude Lifting: Indigenous Ship Owners' Rising Hope' http://www.dailytrust.com.ng/crude-lifting-indigenous-ship-owners-rising-hope.html <accessed on 18/01/2018>

33 Shell Nigeria, Briefing Notes, 2017 Edition Pp. 9, 29

34 *Op cit.*

Conclusion

The practice of cabotage is both old and contemporary economic approach for justifying intervention or restriction to achieve certain results. In whatever policy framework, it is seen as an acceptable tool for achieving set economic goals, especially where competition is unfair and dominance is prevalent as in Nigeria. The practice, such as the reservation of all or part of national market opportunity for national flag ships or aircraft, is justified for political, socioeconomic, geo-cultural and security reasons. This underscores protectionist ideology; trade liberalization is merely economic development mechanism via the waiver system to enhance growth in the maritime sub sector. Thus, a vessel other than a vessel wholly owned and manned by a Nigerian citizen, built and registered in Nigeria is prohibited from engaging in cabotage trade in Nigeria.

Is Nigeria ready to take a leap progress and advance its cabotage potential? A reconsideration of its legal regime and bringing to bear a more favourable disposition clearly reflected on a rejig of extant laws is more than a necessity. From above, the relevance of the waiver principle is at variance with current economic conditions. It has robbed the local content requirements of its well-intended influence. It is consequently submitted that the Cabotage Act should be reviewed and the waiver requirement replaced with right of first refusal in order to sustain and preserve local content policy. In addition, the Nigerian Maritime University should have an increased funding to enable it operate with global standard in the training of seafarers in Nigeria.