



**“THE IMPACT OF CABOTAGE ACT ON ENTREPRENEURIAL
OPPORTUNITIES AND NIGERIA’S ECONOMIC GROWTH”**

BY

AUGUSTINE NWEZE PhD

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APPROVAL PAGE

This is to certify that this research project was carried out under our strict supervision and has been approved for submission to the Department in partial fulfillment of the requirements for the award of the Doctor of Philosophy of St. Clements University.

.....

Project Supervisor

.....

Academic Adviser

.

.....

Administrator
St. Clements University

DEDICATION

I dedicate this project to God Almighty, who is the foundation of all knowledge; for His loving kindness to me throughout my academic pursuit; for His divine providence, inspiration, financial and other provisions.

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My late father had a dream for me to be educated at the highest level in a reputable university in Europe or America. Though an illiterate, my father left an instruction with my late elder brother that

in case he did not survive the civil war that he (my elder brother) must endeavor to send me to Cambridge for my university education. Unfortunately he died when I was just in primary school and could not live to see his dream come true.

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ABSTRACT

It is imperatively impossible never to explore the avenues that exert impact on the citizenry of Nigeria vis-à-vis an improvement on the national per capita income, hence, improved national income and standard of living. Cabotage as coastwise and/or inland water trade has tremendous impact on the nation's economy and of which, the study is aimed at exploring the impact on the Nigerian Entrepreneur through cargo reservation, transportation and haulage of wet and dry cargo within and outside the Nigeria waterways. The study will

invariably evoke, recreate and set in motion the profound implementation of the cabotage so as to exhibit its true impact as expected

Cabotage Act has a lot of business opportunities of which among others are:

- To radically enhance indigenous capital formation in maritime business;
- To transfer technology and technical skill, to Nigerians;
- To drastically improve the maritime industry practitioners' management skills;
- To create more jobs for Nigerians in the industry;
- To improve our national finances, especially as regards to foreign exchange conservation, and;
- To enable Nigerians and government to have greater control over our national maritime security.

It is the equal responsibility of the private, local, state and national stakeholders to shape the strategies and actions necessary to develop the desired state of the Nigerian Cabotage.

The cabotage that will host potentials, which will be technological advanced, safe, secure, efficient, effective, accessible, globally competitive, dynamic, affordable and environmentally a responsible system.

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CHAPTER ONE

NIGERIA MARITIME:

THE CHALLENGE OF ECONOMIC GROWTH IN NIGERIA

1.0 Introduction

Nigeria's economic problems are very many, and the maritime sector is one of them. As a result the policy makers decided to find solutions to the magnitude of economic problems using the Cabotage Act of May, 2004 to stimulate economic growth through entrepreneurship.

The question therefore is: with the existing weak institutions in Nigeria, will the Cabotage Act stimulate the intended economic growth through entrepreneurship?

The Nigerian Economy

Nigeria is a country of about 126 million people and has the second largest economy in sub-Sahara Africa. The Gross Domestic Income of the economy is about US\$38.7 billion. Though the Nigerian economy is mono-cultural, heavily dependent on oil, about 60 percent of the population depends on agriculture for their livelihood. Petroleum production accounts for 25 percent of GDP, 90 percent of foreign exchange receipts and about 70 percent of government revenue. Daily production of crude oil is put at 2.4 million barrels and estimated reserves of crude expected to reach 36 billion barrels and a production capacity of 4.0 million barrels per day by the year 2007. 90 percent of these estimates are in fields yet to be developed. Gas, another strategic resource, hitherto being flared,

has an estimated reserve of 166 trillion standard cubic feet with projected revenue of between US\$5-6 billion annually within the next few years.

Industrial capacity hovers around 48 percent. In addition to vast arable land, the country is endowed with huge solid mineral resources such as bitumen, gold, diamond, tin, bauxite, columbite etc. Tourism, especially eco-tourism, still remains largely underdeveloped. It has a vibrant trainable workforce necessary for a growing economy, with huge opportunities for expansion in the service sector.

Successive Nigerian governments have had to grapple with the mono-cultural nature of the economy by attempting to diversify its revenue base through various measures including, but not limited to the Structural Adjustment Programme [SAP] in the 1980s and early 90s. Prior to the introduction of SAP in 1986, the country has adopted series of periodic Development Plans, which had provided the macro-economic framework for government-led productive and social activities in the economy. The country operated a “mixed economy” in which the government rather than market forces played a dominant role, while the nascent private sector was largely dependent on the State. With SAP, the government began to reduce its role in the economy by moving towards a market-driven, private-sector-led growth and development.

Despite this commitment, government remained the prime mover of the economy, which over the years exposed its inability to deliver on these fronts. The country's infrastructure such as transport, telecommunication, health, education and energy, for instance,

attracted little attention of government with dire long-term consequences. The potential for trade promotion expected of SAP also fail to materialize due to severe structural and other constraints.

When this administration came to power in May 1999, it inherited a virtually collapsed economy. Infrastructure suffered total neglect with declining investment in rehabilitation. Many industries folded up and those in existence operated at less than 35 percent of installed capacity. Unemployment and inflation were at an all-time high. All levels of the country's educational system were faced with crisis of monumental proportions. The energy sector, central to industrial production and development, was in dire need of restructuring and investment. Corruption was all pervasive, and the country's image was battered at home and abroad, a situation made worse by the unpatriotic activities of a tiny segment of the Nigerian population aided by their foreign collaborators in perpetrating financial and other transnational crimes such as the Advance Fee Fraud popularly known as the 419 scam. External debt stood at US\$32 billion almost the size of the country's GDP, without a clear strategy for a sustainable long-term management.

The new administration responded to these economic challenges by adopting various measures to address the structural rigidities in the economy and to lay the foundation for a sustainable growth and development in the short and medium terms. These measures included the following:

- Poverty Alleviation Programme aimed at job creation;

- Completion of the Liquefied Natural Gas Project to diversify the economy;
- Dogged pursuit of food self-sufficiency through various measures such as the provision of fertilizers, rehabilitation of irrigation projects and food storage facilities, agricultural guarantee insurance scheme; etc;
- Deregulation of the downstream oil sector;
- Increased government investment in the rehabilitation of infrastructure such as energy, transport and telecommunication;
- Financing of Small and Medium Scale Industries through the establishment of the Bank of Industry and the Small and Medium Scale Industrial Development Agency;
- Improvement of the security situation through the strengthening of the police and other security agencies in terms of size, funding, training and provision of equipment; and
- Divestiture of government interest in public enterprises and major companies through privatization.

The response of the economy to these measures was mixed. Indeed, government underestimated the enormity of the problems in term of the real extent of neglect and decay of the past. In order to revitalize the economy and ensure a more positive response to the measures already adopted, government realized that a more proactive approach was an imperative necessity. This led to the creation of a strong economic team composed of respected Nigerian economists to ensure proper coordination and implementation of government economic measures (*A paper*

presented by Z. J. Gana at the Roundtable on Nigeria, Department of Foreign Affairs and International Trade, Ottawa, Canada, 5 February 2004).

The Challenges: Epilogue

The Nigerian economy has not grown much in the past 20 years or more. Poverty is therefore pervasive. There is an urgent need to understand the dynamics of growth especially in a global economic environment that has supported growth in other regions, particularly Asia.

The challenge is that much of policy advocacy that goes on is not anchored in objective verifiable evidence. Such evidence if gathered and placed and positioned as a basis for debate or discussion would enable identification of policy options and discrimination or choice between these options. It would also build stakeholders consensus on rules which will facilitate the emergence of institutions that support growth and stability.

In the last two decades there has been a global trend in favour of enhancing private sector economic capacity. Private sector players do tend, in poor country situations to make decisions that produce incomplete value chains and economic performance below the potential of the economies.

An imperative of improving the competitive ability of firms operating in these environments such as Nigeria is therefore providing the companies with data gathering and analytical capacity.

Nigeria lost decades of development due to negative –to-slow growth and has been one of the weakest economy in the world on per-capital basis especially for the period 1981 – 2000. The GDP grew by an average of 2.8 percent in the 1990's. The per capital income growth rate within this period was zero. The average growth rate for the period 1999 – 2003 was about 3.6 percent. Per capital growth rate within this period was 0.8 percent per annum. This is far lower than the 4.2 percent per capita growth rate needed to reduce poverty significantly (*NEEDS, 2003, P19*).

When compared with other countries of Africa and Asia, especially Indonesia which is comparable to Nigeria in most respects, Nigeria's level of economic development over the decades becomes more disappointing. With a GDP of 845 billion in 2001, and a per capita income of \$300, Nigeria has become one of the poorest countries in the world. In the year 2000, Nigeria had earned approximately \$300 billion from oil export since the mid 1970's. Its per capita income was 20 percent lower than the 1975 level, and the country has become so heavily indebted that it has remained difficult servicing the existing debt. Both external and domestic debts amount to about 70 percent of GDP (*NEEDS Document, 2003, P19*).

There is great spatial and sectoral unawareness in terms of the share of GDP and growth performance across regions and geopolitical zones of the country. The real sector is still dominated by the primary production sector – agriculture (41 percent) which is predominantly peasantry with low and declining productivity, and

crude oil (13 percent) while the secondary sector especially manufacturing has been stagnating (about 5 – 7 percent of GDP) thereby making Nigeria one of the lowest industrialized countries in Africa. The services sector has been the fastest growing since independence.

At about 5.3 percent annual growth rate, urbanization rate is one of the fastest in the world and with a stagnant secondary sector, the urban unemployment is acute with the attendant high level of crimes and socio-political tensions. As at March 1999, 23.2 percent of the rural labor forces were unemployed while 12.4 percent of the dwellers were without jobs. In March 2003, rural unemployment rate had dropped to 12.3 percent and urban rate to 7.4 percent (giving a composite unemployment rate of 10.8 percent). These are large numbers giving that the labor force is about 61 million in Nigeria.

Broad microeconomics aggregates-growth, terms of trade, real exchange rate, government revenue and spending, etc have proved, over the 1975 – 2000 period, to be some of the most volatile in comparison to over 100 developing countries. Over the last three decades, high macro volatility has become a key determinant as well as consequences of the poor economic management. Overall, the economy has been characterized by low savings-investment equilibrium (at less than 20 percent) and low growth trap. The economy remains at very low levels of industrialization and exporting, with an average annual investment rate of about 30 percent of GDP required to unleash a poverty-reducing growth rate of at least 7- 8 percent per annum.

Lack of high persistence has been a defining feature of the economy such that in over 40 years, it has never had a growth rate of 7 percent or more for more than three consecutive years. Nigeria is not only poor; it also experiences some forms of de-capitalization (human and financial). Because of perceptions of risk and high cost of doing business, private agents have chosen to keep the bulk of their assets abroad (with independent estimates of stock of capital flight abroad quite significant), and over two million Nigerians (mostly highly educated) have migrated to Europe and the U.S. (brain drain). Most of the FDIs into the country go into the oil and extractive sectors. Only since 1999 have FDI in the non-oil sectors begun to rise significantly. The economic structure remains highly undiversified. Oil exports account for 95 percent of total exports, and manufacturing sector accounts for less than 1 percent. Nigeria has also lost international market shares even in its traditional (agricultural) exports since the 1970s.

Macro policy has been highly circumscribed by the highly inefficient but highly volatile and unsustainable public sector spending, and atypical high volatility of major macroeconomic aggregates. Fiscal decentralization has proved an enduring challenge to effective microeconomic stabilization and efficient public finance management in Nigeria. There is also the lack of policy coherence between the states and the federal government, and even among the various agencies of the federal government. The traditional instruments of economic management, the National Plan and Budgeting process had been rendered ineffective.

Government finances at all levels of government are not in good shape with domestic debt increasing by over 200 percent between

1999 and 2002 (to about US\$9 billion), and an external debt burden, which the government is barely able to service about 50 percent of the contractual service obligations. Government finance is also characterized by pension crisis, arrears of salaries of civil servants, huge debts to government contractors and suppliers of goods and services, a boom and burst cycle of revenue and expenditure, misallocation and mismanagement of resources, etc. at the state government level, a major crisis is looming but goes largely unnoticed. In many states, debts are accumulating at unsustainable levels and weak institutions and economic governance are very acute.

The very low productivity/uncompetitiveness of the private sector and the lack of diversification of the economy are due mainly to the hostile business environment. The constraints to business include infrastructure deficiencies, poor security of lives and property, corruption and rent – seeking, low access and high cost of finance, weak institutions, ill-defined property rights and enforcement of contracts, and unstable macro economic policies especially fiscal and trade policy. Although these conditions have begun to improve since 1999, these are significant obstacles to be addressed.

Nigeria faces the challenges of meeting the Millennium Development Goals. Available statistics from the 1996 survey indicates that poverty is deep and pervasive with an estimated 70 percent of the population living in poverty. Poverty in Nigeria has great regional, sectoral and gender disparities. Other social indicators are also under stress ---income inequality in Nigeria is very high; unemployment is threatening social cohesion, security and democracy; and the imminent HIV/AIDS epidemic is a potent

time bomb waiting to explode and with potential dire consequences for productivity in the economy. Further, there are persisting cases of social exclusion and discrimination against women and this hampers their ability to fully contribute their potentials to the development of the economy.

Despite efforts to promote private sector – led, competitive market economy frame work, there is still the fundamental challenge of transition from statism and rent seeking in an economy dominated by the public sector. The deep vested interests which profit from the system have proved resilient. The perception of an over – bloated and inefficient public service has become one of the key problems. Another is the evidence of weak institutions and persistent implementation failures (*NEEDS, 2004, PP20 – 21*).

The Economy: 2005 – 2006

Within the period under review, there is slight improvement in the economy. Measured in terms of real GDP at constant price (1990 = 100), the economy grew by 5 percent. The real output also increased by 6.1 percent surpassing the targeted 5 percent in the NEEDS. The economic components that contributed to this growth includes agriculture, mining (crude oil), communications, utilities, services and building and construction (Baiye, 2005, P23)

Inflation Rate

The inflation rate, as measured by the change in the composite consumer price index (May 2003 = 100) on a year – on – year basis for the period ended December, 2004, was 10 percent compared with 23.8 percent in 2003. On a 12 – monthly moving average rate

basis, the inflation rate for the year was 15 percent compared with 14 percent in 2003.

The factors that contributed to this growth included the lingering effect of excess liquidity during the first half of 2004 and the sharp increase in the pump price of petrol. In the second half, the decline in inflation rate was attributable to the tight fiscal and monetary policy of the government and the growth experienced in non – oil GDP, particularly food crops (*Baiye, 2005, PP23 - 24*).

Fiscal Operation

The fiscal operation of the Federal Government resulted in an estimated overall national deficit of ₦142 billion or 1.7 percent of GDP compared with the ₦ 202 billion deficit or 2.8 percent of GDP in 2003. The national deficit was as a result of the observance, by the three, tiers of government, of the fiscal rule on oil benchmark price which resulted in a US\$5.9 billion savings. The deficit was financed entirely from domestic sources.

The retained revenue of the Federal Government was ₦ 1,230.7 billion, representing an increase of 20.7 percent over the level in 2003. The aggregate expenditure of the Federal Government rose by 12.3 percent to ₦ 1,377.3 from 2003 level. This increased expenditure level was a reflection of the domestic debt services payments, which exceeded the budget, as well as non – debt expenditure (*Baiye, 2005, P24*).

Government's Economic Drive

A measured renewal of confidence in the Nigerian economy has been brought about by the current economic drive of the Federal

Government. What this has translated into is the increased inflation of direct foreign investment in the different sectors of the economy. This, coupled with the enhanced receipts from the export crude oil within the period in view, has boosted the external sector. One major factor that contributed to this development is the government's unchanged market oriented policy stance.

The government has vigorously presented free enterprise and private sector participation in the various economic enterprise by eliminating most of the laws inhibiting free enterprise. A close attention to excellent service delivery by the public sector in tandem with the profit driven private enterprise is top in priority of the government. This resulted in the formation of SERVICOM by the government to promote effective service delivery. By this all public sector must play their part in meeting all social obligations to clients. In other words, the government is turning attention to quality of service it delivers to the citizens (*Baiye, 2005, P26*).

Gross Domestic Product (GDP)

In 2003, the Nigerian GDP grew to 10.23 percent but dropped to 6.10 percent in 2004. At this performance rate, the population growth rate for the same period (year) was 2.8 percent. Mining (crude oil), industry, agriculture, utilities, communications, building, construction and services contributed to this growth. This was more than the targeted 5.0 percent in 2004.

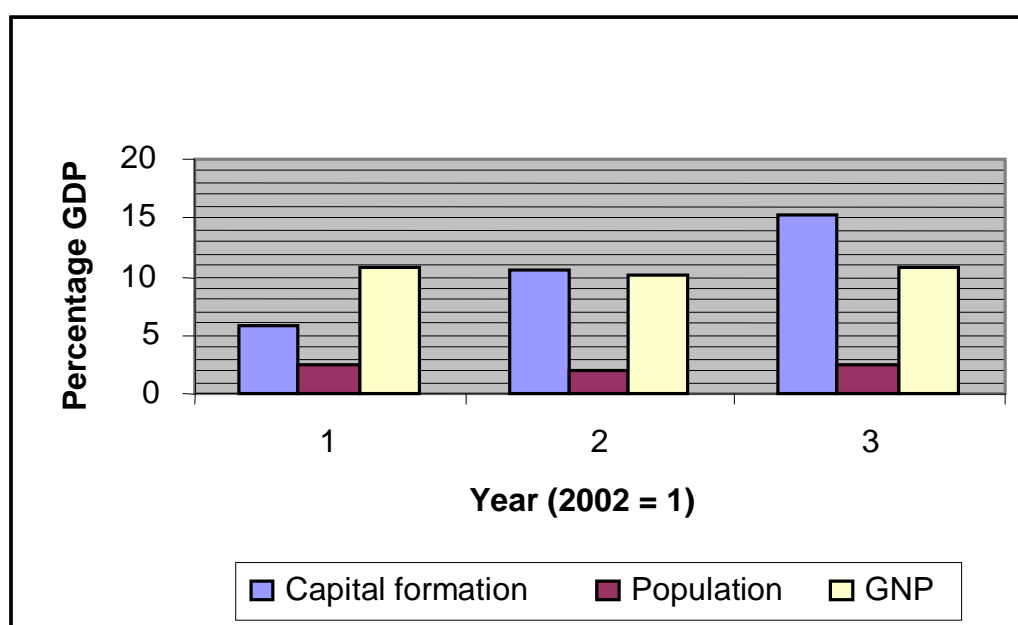
The capacity utilization of industries in 2004 stood at 45 percent as against 46 percent recorded in 2003. The agricultural sector which comprised of crops, livestock, forestry and fishery accounted for only 34.8 percent of the total GDP, while the industrial sector which

comprised of crude petroleum, mining and quarrying, and manufacturing accounted for 37.5 percent. The financial services sector recorded a fall of 19.28 percent.

The factor responsible for the performance of the agricultural sector was government support and favorable weather condition. Other factors include increased production of crude oil, increased global demand for oil driven mainly by speculations, Middle East crisis and the booming Chinese economy. The year-on-year inflation rate dropped to 10 percent from 23.8 percent in 2003.

The manufacturing capacity utilization rose to 41.3 percent in 2002 from 139.6 percent in 2001.

Figure1.0a: **GDP Growth**



Source: Baiye 2005/2006, p28

National Economic Empowerment and Development Strategy (NEEDS)

To avert the recursive nature of the Nigerian economy with the attendant Dutch disease, the Federal government came with the needs document. NEEDS is Nigeria's medium terms poverty reduction strategy process {2003-2007} which derives from the long-term goals of poverty reduction, wealth creation, employment generation and value ex – orientation (*Baiye, 2005 – 2006, P84*).

It is a comprehensive and coherent economic reform agenda and a sectoral response to the challenge of restructuring the economy. The aims and objectives of the economic program are to reduce poverty, generate employment, create wealth, reform the public sector, improve

budget discipline, and lay the foundation for a private sector – led (*Z. J. Gana: A paper presented at the Round Table on Nigeria, Ottawa, Canada, February 5, 2004*).

The NEEDS program involves a nationally coordinated framework of action in close partnership with the state and Local Governments (with their State Economic Empowerment Development Strategy, SEEDS) and other stakeholders to strengthen previous achievements and build a solid foundation for the attainment of Nigeria's long – term vision of becoming the largest and strongest African economy and a key player in the world economy (*Baiye, 2005 – 2006 P84*).

For Nigeria to embark on sustainable growth and development, the programme aims at a GDP growth rate of 7 percent per annum even though the economy is currently growing at 3.5 percent compared with a population growth rate of 2.8 percent. To meet some of the specific targets set out in the UN Millennium Development Goals and to reverse the worsening level of poverty, the country needs a minimum of 5 percent GDP growth rate and an annual investment of 30 percent of GDP as against the current level of 18 percent. The country's external reserves fluctuate between US\$7 and US\$10 billion in the last four years of the administration covering over six months of imports. Exports of non-oil products including gas and solid minerals as well as domestic taxes have also started to pick up in recent years, thereby reducing the overall share of oil to government revenue (*Z.J. Gana, 2004*).

Needs and Economic Priorities

The NEEDS revolves around fundamental pillars, which are expected to complement continuing policy reforms in the following areas:

- Establishment of macro-economic stability with low inflation, low interest rates and low unemployment;
- Acceleration of the Privatization Programme;
- Transparency and accountability including due process and the reform of procurement practices;
- Governance and institutional reforms including anti-corruption, war against financial and transnational crimes and local government reforms;

- Public sector reforms (Public expenditure - to reduce budget deficit now at 4.7 percent to no more than 2.5 percent of GDP, Pension reforms, budget preparation and taxes);
- Rehabilitation of decrepit infrastructure especially energy, telecommunication, transport, etc;
- Promotion of foreign investment;
- Education reform including university autonomy and Universal Basic Education programme (UBE); and
- Substantial reduction of the country's external debt, increase in net resource flows from Overseas Development Assistance (ODA) and the return of public assets stashed abroad.

For the successful implementation of NEEDS, government has identified six key areas to energize the economy. These are oil, gas, agriculture, solid minerals, manufacturing and tourism development. The tariff structure has also been reformed while the ports are also undergoing fundamental restructuring with the planned introduction of destination inspection for imported goods and the Automatic System of Customs Data (ASYCUDA) (Z.J. Gana, 2004).

Key Strategies

The strategic goal of reforming government and institutions is to restructure and strengthen them to deliver effective services to citizens (*Baiye 2005/2006, P84*). Therefore, the direction of the government is in the provision of basic services so as to eliminate waste and inefficiency and at the same time free up resources for investment in other areas like infrastructure.

Institutional reforms on the other hand involves fighting corruption, promotion of the rule of law, strict enforcement of contract using

fiscal policy framework that can be sustained, and ensuring a higher degree of transparency.

The NEEDS document recognizes the fact that the private sector is the engine of growth. It is the private sector that will create wealth and provide or generate employment for the citizens. While the government is the facilitator and regulator, the private sector's role is that of the executor

The key elements of the NEEDS program is sectoral development of agriculture, health, education, small and medium, enterprise (S M E), etc. This is achieved by embarking on deregulation, privatization, liberalization program, and development of infrastructure. What NEEDS aim to achieve in the agricultural sector is to promote the emergence of both medium and large commercial farms and plantations. Another key area is in the establishment of an industrial conglomerate that will compete favorably in the global marketplace.

From the fore going, the key message of NEEDS in terms of value re – orientation is that “it is no longer business as usual.” Through elements such as the privatization, anti – corruption measures, fight against Advanced Fee Found, it is expected that professionalism, efficiency and selfless services will be re – instated in a subsequently right-sized public sector. This element will enhance the drive towards transparency in public and private sector financial transaction while punishing consumption and rent – seeking (*Baiye 2005/2006, P85*).

MACROECONOMIC AND STRUCTURAL POLICY (2006 - 2007): PROVIDING AN ENABLING ENVIRONMENT FOR ECONOMIC GROWTH

The main motivations for the federal government's structural reforms program is the need to entrench macroeconomic stability, improve the business environment, strengthen public financial management, promote private investment, and create jobs in other sectors of the economy apart from oil.

The tax system reform, liberalization of the trade policy, promotion of the privatization, reduction of consumption and improvement of infrastructure are the key elements of the reform agenda of the government.

Tax Reform

The tax reform system and administration is being overhauled and the Federal Inland Revenue Service (FIRS) restructured. The aim of the reform is to improve revenue collection and tax service delivery as well as broaden the tax base and any distortions that may exist.

A bill before the National Assembly when passed will give the FIRS human resource autonomy and funding based on the amount collected from non – oil revenue. Their draft legislation also strengthens inter – agency coordination for oil revenue collection, simplifies and harmonizes tax procedures, and strengthens FIRS auditing powers.

Privatization

Some of the key elements in the Federal Government's privatization program include the privatization of the Nigerian telecommunications (NITEL) and former National Electric Power authority (NEPA) now unbundled and re – christened Power Holding Company of Nigeria (PHCN). The reform of the power sector is important since power is key to the economic growth and development of Nigeria. The major challenge in the privatization process of the governments is the slow pace.

Listed herewith are the enterprises for privatization and/or concessioning:

NITEL/MTEL: Repackaged and sold to transnational cooperation of Nigeria Plc (Transcorp) for \$750 million being 75 percent equity. A negotiated sales strategy was adopted by Bureau of public Enterprise (BPE) because of the failure of the previous attempts.

PHCN: was unbundled into 18 companies and a regulatory commission was set up. It is expected that three of the companies will be privatized by first quarter of 2007.

Other government owned establishment to be privatized between 2006 and 2007 include the Port Harcourt refinery, eleven oil services companies, 49 percent government share of Transcorp Hilton Hotel through limited public offering), Le meridian-Sofitel Hotels, Central Railways Corporation and Abuja Airport are to be concessioned.

Other Structural Reforms

- Following a study on the impact of the tariff reform on the economy, the 50 percent tariff state will be reviewed by end of 2007. the government will also reduce or eliminate the limit of banned items having adopted the five – band customs tariff in October 2005 under the common External Tariffs (CET) of Economic community of West African States (ECOWAS).
- The Nigerian Customs Services Reform will be accelerated, and the number of days it takes to clear goods from the ports reduced by half using the fast track window.
- A tagging and tracking system for monitoring and evaluating spending of debt relief savings in MDG – related sectors is expected to be implemented by the government by August 2006.
- A quarterly report of MDG – related sectors spending to be produced by the government. These include Health, Agriculture, power, Water and Roads.
- Payments of contractors owed up to ₦ 100 million will be completed in December 2006. Bonds issued to cover contractors owed over ₦100 million.
- A database of pension arrears and qualification of the amount of arrears available and the 2005 areas paid off.
- With a view to improving the quality of the portfolio, cost – benefit analysis of the 20 largest projects have been undertaken.
- The public pronouncement bill has been passed by the Senate and is awaiting the passage of the House of Representatives. The work of the Due Process Office is

expected to continue in ensuring transparency and best practices in public procurement.

- The downstream oil sector has almost been deregulated and subsidies removed.
- Microfinance policy launched by the Central Bank of Nigeria (CBN) in 2005, and community banks required to recapitalize to ₦ 20 million from the initial ₦ 5 million within a period of 18 months.
- A Comprehensive Civil Service reform undertaken
- The National Bureau of Statistics (NBS) and the Central Bank of Nigeria (CBN), in order to strengthen macroeconomics statistics, collaborated to carry out a survey toward developing a quarterly GDP database.
- December 2006 is the dateline for the completion of the insurance sector consolidation.

Reform Challenge

The major challenge facing the government is the sustainability of the reform program and in particular how to transmit the benefits of the reforms to ordinary Nigerian citizens. To this end, the government is interested in emphasizing in those areas of economic activity that will make it possible for the benefits of the economic reforms to reach the Nigerians Public in different levels in line with MDG targets. These include reducing poverty, wealth creation, employment generation, education, good health delivery and infrastructure. These are also part of the NEEDS program. Achieving the above requires heavy investment in physical and human infrastructure, such as education and health, productive activities, and more vigorous pursuit of indigenous participation

agenda.

A key risk is that the political landscape and commitment may be altered after the elections in 2007. It is expected that the institutional/structural and economic reforms will continue at all levels of government. Nigeria also faces significant challenges in accelerating growth, reducing poverty and meeting the Millennium Development goals (MDGs). The good news is that Nigeria's reforms efforts and development challenges enjoy the support of the international community.

A case in point is that the World Bank's Country Partnership Strategy has stepped up financial and technical assistance. They will work with the Federal Government in four areas:

- ❖ Financing investments in infrastructure (power, gas and transport)
- ❖ Financial and technical support to improve accountability and transparency, and fight corruption
- ❖ Technical assistance and advisory services towards investment climate and policies to stimulate private sector led growth.
- ❖ Support to national initiatives for human development, particularly those aimed at fighting HIV / AIDS, strengthening the health system, and supporting the knowledge economy.

Structural Issues

In 2005, agriculture outperformed oil in its contribution to the GDP. While oil account for only 25 percent of GDP, 85 percent of government revenue and more than 90 percent of export earnings, agriculture on the other hand accounted for 40 percent of GDP. Though agriculture was down from 60 percent which was what it used to be in the 1960s but it has grown from 6.5 percent over 2002 figures. This growth was attributed to good weather and some reforms in the sector. Part of the government reform program was to grow the non – oil sector, which could explain the growth in agriculture.

Another factor that contributed to the overall improvement in agriculture in the past few years was the trade liberalization policy of the government which estimated the growth of agricultural commodities exports. A number of factors govern agricultural production and prices. These factors include among others weather, government action through strategies that affect macroprices and resource use, the producers in their allocative and investment decisions and consumer in their preferences and purchasing power.

The distribution sector accounted for 20 percent of non – oil sector GDP which is a reasonably good performance. The manufacturing sector has not had a good performance. The sector accounts only for 4.0 - 5.0 percent of GDP. The manufacturing sector's poor performance could be attributed to poor infrastructure (especially power) and weak business environment in areas varying from poor access to credit facilities, excessive bureaucracy, a weak legal

system and above all consumption. All these have contributed in making Nigeria less competitive.

In the World Bank's 2005 global competitive index, Nigerian ranks 88th out of 117 countries, and also came 8th out of 19 sub – Sahara African countries ranked on the index. The various structural reform program of the government in the area of bank consolidation, privatization, deregulation and effort to improve infrastructure are all geared toward supporting the development of the non – oil sector, generating employment and contributing to higher growth. It is expected that the growth in the non – oil sector will be sustained barring poor weather conditions and the economy will begin to benefit from some of the reforms and increase investment.

In addition, government is also focusing on increased investment and output in the oil sector. Further rounds of licensing of production share contracts (CPSCs) for offshore oil production were undertaken in 2000 and 2005 respectively. The schemes allows international oil companies (IOCs) to take risk of exploration, make investments upfront, and recoup their costs and then share whatever be the profit with the government at the ratio of 70 : 30 in favor of the IOCs. Though production and export will be boosted by this a arrangement but it will not impact on government revenues given the lengthy period of cost recovery. It is also very likely that the PCS model will govern a large portion of the future deep – water offshore projects because of NNPC's funding constraints and technical expertise issues.

The government has the aim to raise revenues to 4.0 billion barrels by the year 2010, thereby increasing installed capacity to 4.5 billion barrels. This will enable Nigeria increase its share of the overall OPEC quota. A US\$ 40 billion investment is required to achieve this target.

Nigeria is placed among the top ten gas reserves in the world with a total reserve of 187 trillion cubic feet at the end of 2004. A rapid expansion is expected owing to regulations requiring elimination of gas flaring by 2008. This will make it necessary to convert gas into liquid form for export as well as for domestic utilization.

By 2010 the total revenue from LNG exports is expected to rise to an estimated US\$9 billion from the 2004 figure of US\$3 billion. It is also expected that gas production will double, even as NNPC and its Joint Venture Company (JVC) partner are developing many gas – powered independent power providers (IPPs) to be able to meet the government's target of producing 10,000 MW of power production by 2007.

It is quite clear from the foregoing that the hydrocarbon sector will remain dominant in terms of export and government revenue. And as such the economy will remain vulnerable to the topsy turvy of oil prices movement in the medium term. The Nigerian export base will be further diversified by the anticipated development of gas liquefaction and gas exports. This notwithstanding, it will not end Nigeria's dependence on extractive industries for foreign exchange generation and government avenues (*H2 2006 ARM GAA Report, as in BusinessDay Newspaper, September 11, 2006*).

UTOMI'S ECONOMIC GROWTH DRIVERS FRAMEWORK

Economic growth in the work of prof. Pat Utomi is a function of six variables which he described as the growth driven framework. These variables tend to explain why some nations stagnated while others have continued to grow their way out of poverty. There are also six sets of interdependent variables which intersect with one another and shape the environment of business, determining thereby the strategy choices of firms and performance outcomes that make up the wealth of nations. These variables are Policy Choices, Institutions, Human Capital, Entrepreneurship, Culture and Leadership.

Policy Choices

Paul Collier and the group of academics who see the statistics orientation of African leaders as the source of policies that have taken away individual incentives and produced slow growth, if not stagnation. The intellectual view that dominated the early years of Nigerian independence was the mixed economy model. This model is that in which the state was active in commercial sectors and in “facilitating” the import substitution industrialization strategy and indigenization of the economy.

The military that had taken over the reign of power in Nigeria by January 1996 had little time for the intellectual left. Policy therefore began to withdraw from the broad open intellectual engagement, except for these academics sucked in by the corporatist state and very often destroyed by it. Then there were the urban biased elite-centered set of policies that saw marketing boards redistributes

wealth from cash crops of the rural areas to administrative elite. This was worsened by dramatic leap in oil prices in 1973 following the Yom Kippur Arab – Israeli war. Just as oil was becoming very significant revenue source in Nigeria.

Policies became more statist and significantly insensitive to the impact of appreciating exchange rates for the performance of other sectors. The farmers, unable to survive on Naira value of the exports abandoned their farms. Nigeria was soon to become a monoculture economy. The other trouble with oil was made manifest as oil prices were noteworthy unstable and external shocks from oil prices savings would soon be a dominant feature of Nigeria's economy. Dutch disease would therefore enter the lexicon of everyday Nigeria as governments saw budgets balloon in the face of high oil prices today and crash tomorrow. This led the Nigerian economy to a structural logjam and needed reforms.

Policy reforms have, however, failed to bring the promised investment and growth. This is clear because experience from elsewhere shows that policy choice is necessary but not sufficient for economic growth. Institutions, Human Capital, Entrepreneurship, Culture and Leadership need be considered also. Structural adjustment program (SAP) was introduced, but these policy changes have not moved the people away from poverty on the extreme poor – high networth continuum.

Even though agriculture hosts a majority of the population as a place of employment, its contribution to GDP was only 34 percent in 2005. Tinkering with policies that abolished the Marketing Boards

that had symbolized the extraction of profit with little invested back was a major plank of the reform initiative at the time of SAP. Exchange rate policy shift from the fixed to a two tier market determined rates was part of the package to return agriculture to a path of reckoning.

The new exchange rate mechanism, a precursor to the goal of free market determined exchange rate involved significant devaluation of the Nigerian currency, the Naira. The immediate effect of this is that it made the export of agricultural produce, which overvalued exchange rates had made unappealing in the past years, more attractive and this resulted to the abandonment of cocoa farm.

The policy choice process offered Nigeria a two tier foreign exchange market at the outset. With weak monitoring capacity, there was a wide side arbitrage and a mad rush of people with excess money to obtain banking licenses which were equivalent to license to print money for the unscrupulous. The basic law of demand and supply meant that the value of the Naira continued to be south bound.

In order to stop the tide of the depreciating Naira, the government introduced other policies like Central Bank requiring commercial banks to acquire stabilization securities which forced money out of the banking system without notice in order to bring down money supply and make Naira chasing foreign currencies scarce. Policy choice does matter but it matters in context of other variables. Failure to pay enough attention to that will only produce recursive outcomes.

Institutions

Institutions are about containing uncertainty and bringing predictability to action. They are the guardians of the will of society to place limits to acceptable behavior. By putting cost to behavior that society has come to accept, either because the powerful have convinced others it is in their best interest or because practice and convention have led society to a consensus that the object behavior is in the common interest, institutions reinforce the consensus.

In many developing countries the institutions are weak and under them because many rules have not become settled habits. Rules related to modern economic transactions have not become settled habits in many transition economies because these rules are often new and alien as most new economic practices are imported as part of the race for modernity. Since these new ways hardly build on traditional habits for similar activities, the tendency is for deflection from these new norms in places where capacity of the new institutions for enforcement of the new rules is quite low. Institutions are critical to investments on which growth depends. Institutional weakness, on the other hand, is also a bane of development. Institutions can also be a source of threats and opportunities and competitive strategy demands an alignment of the strengths and weaknesses of the organization with trends in the evolution of institutions to protect it's weakness from being vulnerable to the institutions and to use its strength to make institutions work in favor of the firm.

As the effectiveness of institutions can affect most of the five forces of industry structure analysis, like the other environment mega factors, government and business associations, environment analysis would be incomplete without thinking of institutions.

How did the West grow rich and what are the lessons from how institutions evolve, how capital became available for building the wealth of nations? Hernando de Soto demonstrated that the major stumbling block that keeps the rest of the world from benefiting from capitalism is its inability to produce capital. Capital is the force that raises the productivity of labor and creates the wealth of nations.

Human Capital

Human Capital development is concerned with the skills, know – how, and know – why of persons, their managed capacity and their state of health so they can give enough to increase productivity. Unfortunately, contemporary Nigerian experience has witnessed a combination of decline in the quality of education through poor funding and not well thought – through egalitarian policies regarding contribution of beneficiaries to funding higher educations, declining enrolment in schools; and declining health care.

With HIV/AIDS pandemic and the stranglehold malaria still has on quality of life, especially with its toll on infant mortality, the challenge of human capital needs to be tackled in a more committed way to make progress. The challenge of human capital development in poor nations has been a major source of reduced competitiveness in a global economy in which countries position themselves to

attract a share of investment flows, tourism and technology. In countries like Nigeria the rot in both tertiary education and healthcare has attracted some very provocative and some quite sober statements.

Human Capital is at the heart of the modern competitiveness economy and that the path of building a stock of human capital to out-perform others in both the investment in education and healthcare, and how a country manages the development of those investments. Many nations are poor either because they invest inadequately, or manage poorly that which is invested.

The UNDP Human Development Index provides a fair sense of the relationship between provision for healthcare and human material progress. Where it is possible for some countries that have a marginally higher per person index, it is the norm that most countries that invest significantly in the well – being and education of their people tend to be the more prosperous countries.

The National Health Plan document released by Nigeria's Federal Ministry of Health proposed that: "the goal of the National Health Policy shall be to establish a comprehensive healthcare system based on primary healthcare that is promotive of protective, preventive, restorative and rehabilitative, to every citizen of the country within the available resources so that individuals and communities are assured of productivity, social well – being and enjoyment of living." Unfortunately, the current situation is worse than when that statement was made about 20 years earlier.

The failure of education and absence of commitment to better healthcare management can be a major reason for poverty of nations because it translates to low human capital in the age of the knowledge worker when competitive advantage of nations derive significantly from the state of their human capital.

Entrepreneurship

Entrepreneurship can be described as that process of creating value where non existed and thereby reducing the gap between the level of satisfaction men enjoy with their lives and where they desire to be. Entrepreneurship is a master key to economic growth and development and reduction of poverty in the poor countries of the world, as it is about an understanding of how forces within and outside the narrow economic system produce a dynamic in which creative ideas in builders of enterprise sometime with access to capital, to yield a quantum leap in value creation.

Entrepreneurship is about creating value that did not exist, which bridges the dissatisfaction gap that exist between where people are in their needs state and where they desire to be on the hierarchy of needs. Understanding the phenomenon that enterprise is essentially the soul of human material progress, and how it is impacted by policy choices, institutional arrangements, human capital availability and the dominant values (culture) which are shaped significantly by leadership, is really understanding why nations are poor.

Why is high value enterprise opportunity not so easily pursued by a lot of people who want to make a lot of money? Outcomes are so

had to predict in ideas that lead to big discontinuous changes that advance value to the customer that many walk past the opportunity without seeing it. A good measure for value is, therefore, the amount of uncertainty in the possibilities of commercialization of the new enterprise that shifts satisfaction. It is the quantum of value creation that distinguishes the businessman from the entrepreneur. Nigeria is a country of many businessmen but few entrepreneurs.

Between the businessmen and the entrepreneurs is a continuum from risk at one end (the businessman) to uncertainty at the other end (the entrepreneur). The policy choice, institutional arrangement, etc. tend to indicate which end people locate. The question why are these few entrepreneurs in countries that need more of them so that discontinuous change that yield value innovations will come in quick enough bursts to alter the welfare profiles of a broad part of the population? To answer this requires a little exploration of the evidence how the West grew rich, how Asia catching up, and what role entrepreneurship has played in the diverging performance of these economies.

A reason for the growth of the West, which comes from sociology, and the values of society, is the ethic that supported hard work and innovations. In the case of South East Asia it is the emigrant economic ethic. The emigrant population, not distracted by politics and competing sources of prestige, enhances his personal welfare very quickly and contributes to the economic growth of the society.

The entrepreneurial process: The discipline to actualize the entrepreneurial process thereby creating value where none existed, in a manner that would be sustained for a significant period of time is subject to the effect and trends in society. The process usually involves opportunity conception, commercialization of the venture and institutionalization of the ventures.

Opportunity conception involves visioning the world affected by the venture idea and constructing backwards, a sense of execution that will accomplish the envisioned. This visioning for the opportunity that creates value is driven by the entrepreneur's view of identifying how change will take place and profiting from it. Peter Drucker put it this way in his book on innovation and entrepreneurship: "Entrepreneurs see change as the norm and as healthy. Usually they do not bring about the change themselves. But the entrepreneur always reaches for change, responds to it and exploits it as an opportunity."

Drucker further offered seven services of innovative opportunity which include: the unexpected, incongruities, process need, industry and market structure, demographics, changes in perception and new knowledge.

When the vision is validated by being written down, and reviewed, or thought through where the process is not formalized, the next phase of the process will involve commercialization of the venture. From evaluating the idea to developing a formal business plan and assembling the resources; financial, human, technological, etc, that is required to actualize the value proposition, the process of

commercializing of a venture requires vigor and perseverance. When deferred gratification is not much rooted in the culture, the tendency will be for people to detect venture types that require commitment and much patience in favor of the quick economic rent that is expropriated for wasteful communication, usually of products not produced in the country, thus taking away the many multiplier effects of the economy of the derived rent.

The commercialized venture would, if it is to be sustained, be institutionalized. The process of transition from the hub – wheel – spoke kind of structure centered around the entrepreneur to a hierarchy of standard operating procedures is also much affected by common forms of organization and state of the management philosophy as it is by culture. Many entrepreneurs in poor countries do not professionalize and institutionalize early enough. The effect is that when the entrepreneur has a cold, the business sneezes.

Value created by these ventures tend to be lost to society on their demise by this failure to institutionalize the venture, and develop the value chain for new ladders of opportunity that allows the venture either to make incremental continuous changes as in circular flow of income or indeed to make discontinuous leaps in value creation.

Culture

Values affect risk – taking behavior, how people are managed, the context of trust and the cost of doing business and the work ethic. The relevance of culture in economic growth was best captured by Lawrence E. Harrison and Samuel P. Huntington in their volume “Culture Matters”. In Nigeria, attitude toward venturing vary across a

spectrum from fatalistic disposition in which all is literally left in God's hand, in fundamentalist Islam, to prosperity – preaching Pentecostals. Of greater significance for the effect of culture on economic performance are issues of corruption and rent – seeking behavior in patrimonial state and orientations toward the dignity of the human person. There is also the cultural dimension of reverence for age which invariably calls on the more competent to yield to the older in leadership situations with obvious consequences for performance. These values no doubt affect how policy choices are made. The female child, for example, is educated, and institutions respected, and new venture opportunities captured.

What is of great value here is that the recognition of culture's place in development has grown. But in Nigeria, unfortunately, the importance of culture for development tended to be overlooked. Daniel Patrick Moynihan puts it succinctly. "The central conservative truth is that it is culture, not politics that determines the success of a society. The central liberal truth is that politics can change culture and save it from itself". There are some aspects of culture that affect performance but which formal rules may not necessarily influence. Whereas the work ethic may be so strongly rooted in the sense of self worth of a group, another may actually believe that to try and get more credit than your neighbor is a sign of ill will. In many ways, our notion of culture is an application of ideas of corporate culture as shared values at the level of the nation – state.

Leadership:

Leadership is the core of the of the growth drivers from work. In many ways it can be a subject of culture because the key role of leaders is to transform culture in a way that ensures the progress of the society. Transforming leadership, the quality required to change the way of a culture, is not a leadership orientation most people who have captured power in countries like Nigeria are gifted with. According to John Maxwell, leadership is influence. How do some people influence others such that all are willing to pool energies and work together in a goal – directed manner in which out-comes far exceeds the sum total of their individual capabilities?

Influencing others in a goal – directed way usually comes either from naked exercise of power or through a quest to accomplish shared goals in trusting relationships in which the needs of the followership drive the visionary who direct society's energy to change, or overcome consequences of change. James Macgregor Burns in his book "Leadership" captured the characteristics of leadership in his definition thus:

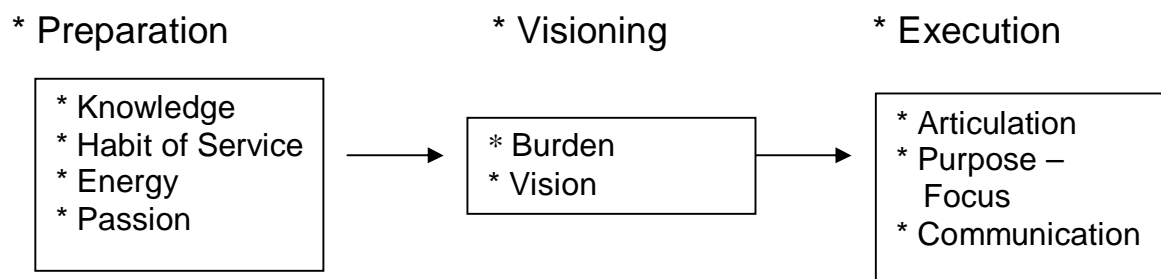
Leadership over human beings is exercised when persons with certain motives and purposes mobilize, in competition or conflict with others, institutional, political, psychological and other resources so as to arouse, engage and satisfy the motive of followers. This is done in order to realize goals mutually held by both leaders and followers.

There are, in essence, three factors that determine leadership effectiveness in the kind of challenges posed by the need to transform culture to a level of higher productivity, output increase,

and consequently improved quality of life for the citizen. Where leadership object is dominated in the form of transactions between leaders and the led; trading off support, for example, with the promise of improved provision of pipe borne water, we have transactional leadership. The point about transactional leadership is that the parties, or bargainers, have no enduring purpose. Often power becomes, unwittingly, a substitute for purpose.

Transformational leadership in contrast has to do with a shared purpose and grand vision which unites the leaders and followers so that they become mutual support for a common purpose. The leadership process includes preparation, visioning, and execution. Each has several elements as illustrated in figure 2 below (*Utomi, 2006, Page 87 – 130*)

Figure 1.0b: The leadership process



Source: Reprinted with permission from Center for Applied Economics

“Why Nations are Poor” by Pat Utomi.

The Maritime Industry in Nigeria

When the word Maritime is mentioned, what really and readily come to minds are ships and movements of cargo. These, no doubt, make up the hardware of the Maritime industry. But a “ship” does not refer to beasts and meter vessels alone. It is interesting to note that drilling rigs, offshore platforms, buoys and other offshore including mobile units are deemed to be ships under maritime Law. Revolving around this hardware is a wide range of services which make-up the software of the industry. These include Manning services, port services, Pilotage and towage, dredging, Stevedoring services, bunkering and freshwater and other victuals services and of course agency services. It is also a known fact that, Maritime transportation on its own is a major earner any day. (*Omsa, 2005 pg. 14*)

The Maritime Sector of any economy is like an orbit around which the economic being of the country revolves or rotates. Even the land locked countries can not progress too far in their developmental programmes without having some collaborative understanding and co-operation with countries having seaport access. This scenario is understandable against the backdrop of the fact that over 90 percent of International Trade is done by sea or carried by ships.

The number of world fleets today stands at about 46,000 Cargo carrying vessels with varying sizes and cargo carrying capacities. It is believed that on daily basis, these ships move millions of tons of cargoes comprising goods and

commodities, fuel, crude oil, raw materials, machinery and equipment, foodstuffs, medicaments, etc, around the world.

The situation is not different in Nigeria, as a member of international community. It is estimated that well over 90 percent of her visible international trade is sea borne. Nigeria as a nation that heavily depends on exports of crude oil for her foreign exchange earnings and importation of various goods including raw materials for industries can not but pay serious attention to her maritime sector. This, most probably, must have been one of the reasons why the Federal Government is paying particular attention to the reforms carried out at the nation's Maritime Sector.

The National Maritime Authority (NMA) is virtually an important agency of Government charged with the overseeing of the vast maritime activities in the country. Nigeria is naturally located in the important international trade routes, and is divinely blessed with much viable maritime environment. The vast resources of this environment have serious impact on the nation's economy.

In 1974, UNCTAD Code of conduct for cargo sharing known as UNCTAD 40, 40, 20 was adopted. The Nigerian Shippers Council was subsequently established by decree 13 of 1978, and charged with the responsibility of organizing shipping activities in Nigeria. However, the National Maritime Authority (NMA) was established by decree 10 of 1987 to implement the Nation's shipping policy in line with the UNCTAD

communities. Hence, the nation was ready for full participation in merchant shipping line activities. The Nigerian National Shipping Line (NNSL) was incorporated to enable the country to participate fully in the Nation's Maritime Trade. As at 1987 the NNSL could boast of a fleet of 27 vessels. Sadly enough, NNSL now stands liquidated.

National Unity Line (NUL) replaced the NNSL. It began with one vessel. It also suffered similar fate as NNSL. It is believed that, as at the last count, there were a total of 122 registered shipping companies in Nigeria. All these mostly depend on chartered vessels to carry their own share of cargo. (*Heritage Business to Business Magazine, vol. 1 NO. 1, June/July 2004, P.10*).

Nigeria is richly endowed with maritime potentials which Britain, the colonial masters discovered, amply exploited and utilized to further their trade between their colonies in West Africa and Britain. With her vast coastline, marine, economic and human resources, Nigeria was seen by the British at that time as a potential leading maritime nation in West Africa. True to this "prediction" Nigeria at independence, realizing the imperatives of economic and political independence as a young nation quickly proceeded to establish the Nigerian National Shipping Line (NNSL) among other dimensions. Again along with other newly independent African countries, Nigeria joined the International Maritime Organization (IMO). By the 1990s many of these Independent African countries, including Nigeria had formed a substantial membership of

IMO. As these countries began to expand their national fleets and improve their maritime activities, they were confronted with the twin problems of shortage of funds and experienced maritime professionals or experts. On the issue of trained professional, IMO was able to assist these nations through its technical co-operation programmes. IMO had also gone ahead to assist through provision of fellowships, research and specialist training grants for nationals of the member states.

Despite these bold initial efforts on the part of Nigeria to develop her maritime sector, at independence, she is yet to become a leading maritime power in Africa as earlier “predicted” or forecast by the colonial masters. Worst still, even as at this moment, Nigeria is not among the first 20 maritime nations of the world; nor is she able to build her locally made ocean liner, in spite of being proud owner of a world class dockyard which is about the best in Africa. As if that was not bad enough, Nigeria lost all her fleets of 32 ocean going ships in quick succession, having been sold as a result of liquidation of the NNSL due to gross mismanagement, professional incompetence, political naivety and unbridled corruption.

1.0.1 Nigeria Maritime Cabotage

Cabotage is an area of maritime industry which most nations reserve for their citizens because of its economic and defense implications. There is only a pathetic presence of Nigerians in cabotage business within the Nigerian coast waters. “Cabotage” is 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 coastal trade so that it means navigating and traveling along the coast between the ports thereof” (Cf. *Black’s Law Dictionary 6th Edition* page 202.) Also the papers titled, “Advocacy paper for the promulgation of Nigerian Maritime Cabotage Law part II: present and potential problems of cabotage and Recommended solutions.” Pages 42 – 57 and 213 – 224 of the “Supporting Documents for the making of A Maritime Cabotage Law in Nigeria” presented at the public hearing on Cabotage Bill, in April, 2001 at the House committee on Transport, National Assembly Complex, Abuja). It is also a term carried from the French word “Caboter” meaning “to sail along the coast”. However, cabotage has come to be known as “coastal trade” or “coasting trade” or “coastwise shipping”; meaning the 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 coast or to operate air traffic within its territory (As in Asoluka 2003, pp. 69-70).

1.0.2 Cabotage Regime in Nigeria

It is quite unlikely that discussions on maritime restructuring and reform will be complete without mentioning the cabotage Act which was enacted in this country in 2003. The main import or objective of the Act is to empower Nigerians, especially the entrepreneurs who are engaged in maritime

enterprises. The limit of the Act is restricted to maritime services that are or can be carried out within the country's coastal and inland waters.

The main components of the Act, without going into its legal technicalities are that, all economic activities within Nigeria's coastal and inland waters must be indigenized or reserved for Nigerians. Since most of these activities hinge on shipping services and related matters, it is implied that for Nigerians to participate in these coastal trades they must own ships which must be Nigerian built, owned, registered and crewed. All over the years eligible Nigerians had been shortchanged or excluded from participation for lack of cabotage Law. With active connivance of Nigerian collaborators, foreigners have been feeding fat on these trades, to the exclusion of otherwise eligible Nigerians.

Historically, it is on record that France had enacted cabotage law since about 16th century by reserving all navigational activities within the ports along her coast, exclusively for French vessels. Although many changes have taken place over the years, France had made sure that the main meat or thrust of the cabotage law still remains till date. About fifty or so countries around the world have cabotage laws which are designed to achieve similar aim, i.e protect their citizens against competition by foreigners in the area of shipping. The most popular of cabotage laws around the world today is the America's Jones Act which is strictly enforced to protect her citizens in the affected areas.

So many people may wonder if the Nigerian cabotage law is not in conflict with our international maritime law, our country's membership of WTO and the universal principle of free trade. The possible answer to this is that with about 50 countries already practicing cabotage law in their respective countries, including USA and France, without being challenged or charged to the world court for any breach, suggests that there is nothing illegal or unethical about it.

Going through the cabotage Act, one cannot but wonder if Nigeria has the capacity to fully implement it, most especially when we talk about ship owning, building and manning. Perhaps, the government is not unmindful of these difficulties hence it settles for what can be described as a liberal cabotage policy which permits the use of waiver in areas where the country is deficient or lacks adequate capacity. The Minister of Transport has power to grant waiver where applicable.

1.0.3 The Relevance of Cabotage Law in the Maritime Industry.

The viability of any industry is determined by the level of need, demand and market for the services it provides. The demand and availability of market creates the opportunities. The cabotage under the auspices of maritime industry can boast of these and more. There is huge market for prospective investors in the maritime industry which, if fully exploited, has the ability to surpass current earnings in the oil industry.

Relevance to trade and industry: - Trade is the engine of development of any nation. A nation's balance of trade affects her gross domestic product and the expansion of basic manpower and technological development. Trading in today's economy is mostly carried out on water and ships are the connecting vehicle. No form of transport equals the ship in the enormous quantity and volume of goods traded between nations. Shipping remains the impetus by which a vigorous export promotion policy can be mounted and sustained. But there isn't enough ships to carry the world's goods and sustain commerce.

Statistics from Royal Register of Shipping shows that since 1975, there has been a continuous rise in the world surplus tonnage due to shortage of merchant ships. Between 1975 and 1985 the world surplus tonnage increased from 86.0 million deadweight reaching a peak of 195.8 million deadweight in 1983 before declining to 161.8 million deadweight in 1985. In relative terms, the share of surplus tonnage in total world merchant fleet increased from 8.4 percent in 1975 to a peak of 28.5 percent in 1983.

Although, there is no current comprehensive data showing the percentage tonnage surplus as at today, it is believed, the figure would have risen to about 40 percent. And the main reason why this figure would have continued to rise is the decline in the volume of ship acquisition and ship building. It was gathered from the same source that the volume of active merchant fleet in the world was at its peak in 1978 when it

recorded a volume of 632.7. The volume dropped in 1979 to 587.7 and by 1985 it had dropped to a volume of 503.0.

It is doubtful if Nigeria's merchant fleet accounts for 3 percent of the world merchant fleet. As a matter of fact, it was not until the 3rd National Development plan (1975 – 1980) that the Nigeria National Shipping Line Limited (NNSL) placed order for 19 multipurpose general cargo vessels at a total cost of N200 million. The vessels which were financed exclusively from our petro – naira revenue were built in Yugoslavia and Korea. No other shipping company in the country apart from African Ocean Lines Limited placed orders for and took delivery of any vessel from any shipyard in the world until 1987. Today, the story of NNSL is known to all. Neither company nor vessels are traceable. The NNSL palaver depleted Nigeria's available and active merchant fleet. By the researchers reckoning, there cannot be more than 20 active Nigerian registered vessels handling Nigeria's external trade. It is estimated that 300 vessels are required to meet Nigeria's tonnage.

It is evident that ship acquisition and ship building is big business. Our financial experts will readily assert that they do not have the financial strength for such gigantic projects. It is hoped that this complaint will be put to rest in the course of this dissertation. It is also good to quickly draw attention to the current auction of GSM licenses for mobile phones in the communications industry. At the time of conducting this research, the bid has risen to US\$285m. From where are

these funds coming? The world is moving towards privatization, concessions and competitiveness. A lot depends on the policy thrust of the Federal Government. It suffices to say that serious plans should be made for the acquisition of the required tonnage and its placement on the Nigerian Register of ships. It is also important for the Federal Government to make monetary, credit and fiscal policies that would make ship acquisition more attractive. The ultimate objective is the emergence of Nigeria as a regional hub for a whole range of shipping services including ship construction, repairs and dry-docking.

The Relevance to transportation and communication is not left out. Nigerians are highly mobile. With all the energy and drive at the disposal of her citizenry, this is hardly surprising. But very little opportunity is taken of this. Any ship building company in Nigeria can rake in fabulous profits if it dares to explore the potentials available in passenger and commuter ferries, leisure crafts, cruising yachts, offshore support vessels, fishing vessels, barges and coastal trade and transportation needs. It is cheaper to build these smaller vessels than seagoing vessels.

There are also diverse opportunities to be explored in inter-coastal passenger and cargo liner services within the West and Central African Sub region. It is estimated that Nigeria generates about 70% of the total volume of cargo traffic in the West and Central African Regions which should be carried by Nigerian shipping companies. (Omsa, 2005)

1.1 Background to the Study:

Cabotage is a legislative tool restricting access or reserving maritime or aviation trade within a country's territorial jurisdiction to the local capacities. The Nigerian Maritime and Cabotage was introduced by the Nigerian Government following calls by prominent maritime specialists and operators on the need for government to make concerned effort towards harnessing the indigenous maritime capacity and utilizing the abundant opportunities in the sector for the benefit of the Nigerian people in order to reverse the trend where it still has its maritime trade both territorial and extra territorial dominated by foreign operators.

The government's intention in introducing the cabotage regime is to encourage the development of the maritime industry by an interventionist scheme aimed at boosting the growth of the local capacity in the face of choking external competition and domination.

Cabotage is a practice worldwide that is over 60 years old, a contemporary economic approach which justifies intervention of this nature to induce some determined result (as against the classical economic approach of free market forces), as an acceptable tool to achieving some set economic goals, especially where competition is unfair and dominance is prevalent. It has been observed that this practice worldwide both in maritime and aviation has been induced by diverse factors including reserving all, or part of the national market

opportunity to national flag ships or aircrafts either for political, economic or security reasons. Other reasons for this protective policy practiced around the world are to develop indigenous human and capital capacity. These are some of the major aims of the Nigerian maritime cabotage.

And as for the scope of the cabotage Act, the Coastal and Inland Shipping (cabotage) Act, 2003 covers the carriage of goods and passengers by vessels and any other mode of transportation, mineral, other natural resources, and any marine transportation or activity of commercial nature within Nigeria's territorial waters as prescribed by *the Exclusive Economic Zone Act CAP 116, laws of the Federation Republic of Nigeria, 1990*. The Act seeks to restrict the use of foreign vessels in domestic coastal trade and consequently enhance the development of indigenous tonnage.

It is now two and half years since the enactment or one and half years of implementation of the cabotage policy. Nigerian's are yet to notice significant change. The cabotage trade is still dominated by foreigners. From the perspective of the target group i.e. Nigerian Shipping Companies, the question remains: to what extent has cabotage delivered its intended opportunities? Considering that out of 320 or more private members' bills introduced in the House of Representatives between 1999 and 2003, only ten crossed the Legislative Rubicon to become laws: why is it that the same forces have not succeeded in ensuring a mere robust and determined implementation of the cabotage policy? What factors are

responsible for the very slow take-off of the programme? What are the problems? Are they associated with the very nature of the politics of shipping development, the process or policy, or a combination of these forces? What are the impacts of the cabotage laws or of what benefit is the cabotage to the Nigerian entrepreneur? These and more are some of the issues to be analyzed by the researcher in the course of writing the dissertation.

1.2 Statement of General Problem:

A maritime cabotage law is a legislation empowering navigation and trading within a country's coasts or from port to port within a nation to be reserved exclusively for and carried on by its national flagships and nationals. It is purely for the regulation of domestic shipping. In this regard, it includes navigation and trading in the nation's inland waterways. The maritime cabotage law may be in a single shipping legislation, or in a combination of two or more shipping legislation of a country.

There is another type of maritime cabotage which is often referred to as short sea shipping or regional shipping which is concerned with the transportation of goods and or passengers between ports of a given group of countries within a specific economic groupings (eg Mercosur, and the EU) by way of coastal ships, ferry services and/or port services such as tugs, dredges, maintenance and repair of craft, pilotage launches, bunkering and supply of vessels etc. Cabotage policies are applied in such regions or sub-regions, instead 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 trade (*Maritime Resources Development Issues and Challenges; 2003, P.70*).

This dissertation is aimed at having a comprehensive report which critically examines the issues concerning cabotage services, as regards to its impact on the Nigerian entrepreneurial opportunities for growth. Are there any benefits accruable to the Nigerian economy from the Nigerian Maritime cabotage? What are those benefits and how do they help in boosting the Nigerian entrepreneurs? These findings and more will be revealed and recommendations thereto, made, in order to enhance the formulation of sound scientific and economic solutions to issues and policies in these areas. The research work is expected to assist the NMA, the entrepreneurs, and other governmental agencies and other stakeholders in carrying out their statutory functions including its promotional and regulatory roles and measures, designed to facilitate the development stance and the growth of the nation's maritime industry.

1.3 Rationale for the Study:

The broad rationale that informed the conduct of this q dissertation can be seen as stated below:-

- a. To identify the Nigerian maritime cabotage as it exists under the Nigerian Maritime Authority (NMA).
- b. To identify the various opportunities accrued to the Nigeria entrepreneurs from the cabotage.

- c. To identify the prevailing problems that hampers the economic viability of the maritime cabotage services in Nigeria.
- d. To identify the potentialities of the cabotage to the Nation's economy.
- e. To suggest some re-organizational structures / Reforms, and the modules that will enhance the feasibility of NMA vis-a-vis the Nigeria maritime cabotage.
- f. To identify the impediments of the Nigeria entrepreneur in regards to the cabotage business.
- g. To profile solutions to Nigeria entrepreneurs in relationship to their problems in the cabotage business.

1.4 Significance of Study.

The findings of this dissertation will likely set in motion further research studies into the Nigerian maritime cabotage and its impact on the nation's economy and /or as an interventionist in the boosting of the Nigerian entrepreneurial activities. In fact, it is expected that with the passage of the cabotage Act by the National Assembly, a new world of opportunities for business ventures in the maritime cabotage sector have emerged. As the backbone of entrepreneurial set up, new opportunities are always being sought, discovered, grasped and acted upon to the benefit of the consumer and the entrepreneur. To this end, the maritime experts, regulators and entrepreneurs alike, have to rob minds together to provide insights into how to utilize the opportunities in the maritime industry. The potential entrants into the maritime business should see these as good business

opportunities to be utilized in order to create job opportunities, training for seafarers, provision of / building of ships and other ocean going vessels to be used, which will have to bear on the nation's economy and to improve the well-being of the Nigerian entrepreneur. It is also believed that the study will stimulate and provide the needed impetus into the economic growth of the nation's maritime industry, hence the standard of living in general.

1.5 Scope of the Study:

The scope of this research study will be limited to the impact of Nigeria maritime cabotage on the nation's economy and entrepreneurial opportunities. This dissertation may be limited to maritime cabotage, which is also known as domestic waterborne transportation. The researcher also wishes to reiterate here that, there is limitation in the area of data collection, some useful data required are treated as confidential and permission has to be sought before they are released. Even the parties for oral interviews, permission has to be sought before interviews were granted. Time factor is another noticeable constraint.

However, it might be noted that frantic efforts were made to ensure that useful information were eventually collected to enhance an objective conclusion of this study.

CHAPTER TWO

LITERATURE REVIEW

2.0 Introduction

Cabotage, which is meant navigation along the coasts, is the major concern of this dissertation. It is an area of the maritime industry which most countries reserve for their citizens because of its economic and defense implications. But here in Nigeria, it is only pathetic few that are in cabotage business with the coastal waters. The researcher also wishes to point out some shortcomings in the National Shipping Policy Act and recommend a number of measures, which may include NMA's continued support for cabotage, that the cabotage policy should require participating vessels to be built (where possible), owned and manned by Nigerians, that the volume of cargo should decide the type of vessels to be acquired, that all relevant laws be harmonized and that the Nigeria LNG Amendment Act be further amended in favour of Nigerian participation in the shipping of gas.

Since the national tonnage has drastically reduced (Nigeria is not even ranked among the first 35 countries with the highest tonnages in the world), and Nigerian ship owners and shipping companies are not only unable to compete with the highly subsidized foreign vessels in international sea-borne trade but have also been facing difficulties in being allowed to carry Nigeria wet cargo which constitutes about 80 percent of the domestic cargo from port to port in Nigeria. It has become

necessary for the National Maritime Authority (NMA) to see ways of making necessary positive changes in the overall interest of the maritime industry (*Nigerian Maritime Resources Development: Issues and Challenges. Vol.1; PP. 66-67*). It is arguably true that without cargo, there is nothing for ships to transport, whereas the running costs of the ships accumulate daily and investors will be discouraged from putting their money into hardware shipping as opposed to the software aspect of shipping. It has often been argued that because of the capital intensive and competitive nature of owning and running vessels and its long-term nature of returns, it is more profitable to go into the software aspect of shipping than the hardware aspect. A well-articulated and implemented cabotage policy would therefore induce sufficiency of cargo for carriage by indigenous shipping companies and ship owners as well as capacity building and increased tonnage due to acquisition of needed bottom to carry the increased cargo.

More so, trade liberalization and the channeling of money toward non-oil sectors has prompted the government to rethink the country's transportation chain. "Port infrastructure is being upgraded. Safety of sea is being improved, private participation in port activities is being encouraged and shipping technology is being enhanced. One can say that we are prepared for the liberalization of the economy," says Rear Admiral Festus Porbeni, the then minister of transport.

Being a coastal nation, there exist sizeable offshore exploration and production activities in the oil and gas sector. The oil firms that participate in offshore exploration and drilling require a lot of logistics support both for equipment, supplies and personnel. These are usually handled using marine vessels of various descriptions and sizes.

Given the recent upsurge in communal violence and environmental activism, there is a tendency for new developments to be concentrated in offshore locations, and thus an increase in the demand for marine logistics solutions.

Now that the cabotage regime is in place, it is believed that all such businesses are by law, reserved for Nigerian vessels and their Nigerian owners, thereby increasing the business potentials of local marine equipment operators, hence the Nigerian marine entrepreneurs.

It can also be seen that with the licensing of more oil fields and proposed LNG plants in various parts of the country, more opportunities are opened for Nigerian entrepreneurs to boost their growth economically. But given the high capital requirements of entering the marine transportation and logistics business, few people and firms will be in a position to harness the potentials presented by the increase in business prospects.

Nigeria therefore needs a versatile land and water transportation scheme which will serve as a catalyst for Nigeria's industrial revolution. The inland waterways are being dredged to ensure year-round navigability. River ports along the

way are being developed. But if cocoa production (160,000 tons forecast for the subsequent years' harvests) continues its upward movement both in prices and volume, traders will need to supply their buyers before competitors like Côte d' Ivoire get there.

Commerce is also being projected to increase by 20 percent among members of the Economic Community of West African States (ECOWAS). Nigerian manufactured goods and mineral exports like bitumen will need to travel seamlessly from factories and tar sand sites down to the country's six seaports. From there, it is just a stone throw away to West Africa and Atlantic Europe, time-wise of course. But after years of military rule, these changes will bring the country out of its psychological self-exile. "We are committed to breaking the jinx of isolation from the developed world", says Porbeni.

It is also assumed that the image makeover which the Obasanjo government has given Nigeria will help the country to capitalize on West Africa's largest naval infrastructure. With an eye on developing a system to support the expanded productive base, the country's seaports have been at the vanguard of reform. Port facilities that stood idle have been privatized and a number of Federal agencies involved in cargo processing have been reduced to four: the Nigerian Customs Service, the Ports Police, the Nigeria Immigration Service, and Authorized Agents. The capital budget of 1999 also foresaw \$8.5 million of investments into access roads like the Port Harcourt refinery road in the oil-producing Delta Region. The

National Railway Corporation (NRC) underwent its own rehabilitation program in 1997 when a Chinese Civil Engineering team updated 2,278 km of tracks and re-equipped it with locomotives, wagons, and freight cars. Completion of the Itakpe Warri Ore line was prioritized in the National Rolling plans, 1999-2001 budgets. The railroad system was also allotted approximately \$16.7 million for the installation of a digital microwave signaling system at its telecommunications stations. If these upgrades in the inland transportation system are coupled with projects like the mega port in Onne, Rivers State, known as the Federal Ocean Terminal, the advent of democracy will indeed have given the country a face-lift. "We will win the confidence of the international community. Foreign investors have been assured of concessions and a favourable investment climate," says Porbeni.

"Here, the internationalist comes in," reiterated John Egesi, former Director General of the National Maritime Authority (NMA), a graduate in nautical science. "Without them we won't be able to cope. The whole idea is to gradually start to let trade in until we grow stronger. Then the need for intervention will lessen and we will be able to walk, talk and run like other people." The NMA was created by a decree in 1987 and ten years later was grossing \$52 million from the Federation's coffers. It serves as the overseer of shipping policy and with the country's new opening to world trade also supervising the proper commercialization of the sector. Egesi, by then defined the parastatal company as the mother of the future shipping industry in Nigeria.

Ultimately directed at fostering economic ties among members of the ECOWAS Sub-region, the NMA assists local companies in expanding their fleet. It also ensures that Nigeria flag vessels carry at least 40% of the total trade to and from Nigeria, referred to in short as the “40:40:20” cargo sharing rule. “But the real definition of the maritime sector is not just the “40:40:20” rule,” says Egesi. “Shipping is not a welfare state. The important idea behind shipping policy is to prepare Nigeria for a Laissez-faire stage in maritime activity so that local shippers can become proper competitors.” So in order to compete at sea, Nigeria has to meet safety standards dictated from abroad. The recent merger of the NMA with both the Maritime Inspectorate Division (MID) and the Government Inspector of ships (GIS) will hopefully harmonize safety regulations. All laws relating to maritime safety will now be executed by the NMA. The implementation of these laws in turn grants credibility to a country’s ports and vessels. The safety of a ship is expensive. But this is what we call affordable safety. “Without keeping certain standards we cannot have a good flag state,” said Egesi. A national coast guard regiment is being constituted for search and rescue operations as well as for anti piracy action. (*Omsa, 2005, PP.9-11*)

2.1.0 The Nigeria Maritime Cabotage

“Cabotage” is 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 coastal trade so that it means navigating and

traveling along the coast between the ports thereof” (Cf. *Black’s Law Dictionary 6th edition page 202. also the papers titled, “Advocacy paper for the promulgation of a Nigerian maritime cabotage Law part 2: present and potential problems of cabotage and Recommended Solutions. “Pages 42-57 and 2,3-224 of the “supporting Documents for the making of a maritime cabotage Law in Nigeria” presented at the public hearing on the cabotage Bill in April, 2001 at the House Committee on Transport, National Assembly Complex Abuja*). It is also a term coined from the French word “Caboter”, meaning “to sail along a coast.” However, cabotage has come to be known as “coastal trade” or “Coasting trade” or “Coastwise shipping” meaning the 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 (*Chris Asoluka, 2003, PP.69-70*). This dissertation is centered on maritime cabotage, which is also known as domestic waterborne transportation.

It is therefore quite unlikely that discussions on maritime restructuring and reforms will be complete without mentioning the cabotage Act which was enacted in Nigeria in 2003. The main objectives of the Act were to empower Nigerians, especially those who engaged in the maritime enterprises. The limit of the Act is restricted to maritime services that are or can be carried out without the country’s coastal and inland waters.

The major components of the Act without going into its legal technicalities are that all economic activities within Nigeria's coastal and inland waters must be indigenized or reserved for Nigerians. Since most of these activities hinge on shipping services and related matters, it is implied that, for Nigerians to participate in these coastal trades they must own ships which must be Nigerian built (if possible), owned, registered and crewed. All over the years, eligible Nigerians have been shortchanged or excluded from participation for lack of cabotage law, with active connivance of Nigerian collaborators. Foreigners have been feeding fat on these trades to the exclusion of otherwise eligible Nigerians.

Historically, it is on record that France had enacted cabotage law since about 16th century by reserving all navigational activities within the ports along her coast exclusively for French vessels. Although many changes have taken place over the years, France has made sure that the main meat or thrust of the cabotage law remains till date. About fifty or more countries around the world have cabotage law which are designed to achieve similar aim i.e. protect their citizens against competition by foreigners in the area of shipping. The most popular of cabotage laws around the world today is the America's Jones Act which is strictly enforced to protect her citizens in the affected areas. *(DR. (Alh) W.A. Kareem, 2005, PP. 22-23).*

Some people may wonder if the Nigerian cabotage law is not in conflict with our international maritime law, our country's membership of WTO and the universal principle of free trade.

The possible answer to this is that with about 50 countries already practicing cabotage law in their respective countries, including USA and France, without being challenged or charged to the world court for breach; suggest that there is nothing illegal or unethical about it. So, going through the cabotage Act, one cannot but wonder if Nigeria has the capacity to fully implement it, most especially when we talk about ship owning, building and manning. Perhaps, the Government is not unmindful of these difficulties hence it settles for what can be described as a liberal cabotage policy which permits the use of waiver in areas where the country is deficient or lacks adequate capacity.

Nigeria's cabotage Act is a piece of legislation which, if well implemented, can transform the fortunes of Nigeria. Apart from empowering Nigerians, as active participants in the coastal trades, cabotage will provide many jobs, alleviate poverty and open training opportunities and facilities for the Nigerian maritime cadets and seafarers.

The challenges of making cabotage in Nigeria work effectively are quite enormous but not insurmountable. For example, Nigeria today lacks a national fleet or national carriers. Were any of these in place, it would have been possible to use it to train Nigerian Cadets, Marine Engineers, and Electrical Engineers etc and employ those who have been trained but now jobless. This would also have helped in supplying crew to cabotage vessels. It is sad to reiterate here that, Nigeria is probably the only country in the world without her own fleet. We

all know why it is so. In the spirit of deregulation, privatization, Build, Operate, Transfer (BOT), Port concession reform etc it is inappropriate to expect the Government to begin establishing a national fleet etc. Even if it did, the civil servants would run it aground once again. What could be suggested is probably NMA and NPA joining with private sector organizations which would have 60-70 percent equity share, leaving about 30 percent for NMA and NPA. Jointly, they would form a company to own a national fleet to be managed by purely professionals, both local and foreign. Besides, now that Niger Dock Company is under private management, it should be challenged to take advantages offered by the cabotage regime to build vessels, tug boats, cruise boats, barges, etc which can be deployed to serve our coastal water trade and businesses. If need be, the company can invite other investors and competent foreign and local professional or technical services.

Another challenge which implementation of Nigerian cabotage law faces is in the area of providing funds to acquire new ships and other marine equipments which by nature are quite expensive. Until the recent bank recapitalization, there was hardly any Nigerian bank that could fund new ship acquisition. This is simply because banks' capital base was very low. Besides, ship loan repayment usually takes long time which is unmatched with short-term deposits of the Nigerian banks. Also, for the same reason of low capital base, many Nigerian banks cannot access foreign loans with low interest and long repayment period.

Added to all the above mentioned problems is the issue of granting waivers which is vested in the Hon. Minister of Transport. In view of the nation's glaring inadequacies in the areas of owning, crewing and managing cabotage vessels hundred percent, it becomes important to grant waiver in needed critical areas of need so as not to cripple the nation's economy. The greatest challenge here is how to balance national interest and the imperative of keeping the maritime services in our coastal waters going uninterrupted. The Minister's patriotic and sound judgment in these matters are important *(DR. (Alh) W.A. Kareem Ibid)*

2.1.1 The Marine Cabotage Laws.

A marine cabotage law is a legislation empowering navigation and trading within a country's coasts or from port to port within a nation to be reserved exclusively for and carried on by its national flagships and nationals. It is purely for the legislation of domestic shipping as opposed to international shipping. In this regard, it includes navigation and trading in the nation's inland waterways. The marine cabotage law may be in a single shipping legislation or in a combination of two or more shipping legislations of a country.

There is another type of maritime cabotage which is often referred to as Short Sea Shipping or Regional Shipping which is concerned with the transportation of goods/passengers between ports of a given group of countries within a specific economic grouping (eg. Mercosur, and the EU) by way of coastal ships, ferry services and/or 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 instead of an individual country, and as a result of intergovernmental agreements in order to favour local or regional employment and to control regional and/or sub-regional coastal trade.

It is understood that many countries especially in Europe, North and South America including the US and Canada and South East Asia have already adopted one cabotage law or the other in order to attract the benefits derivable from cabotage policy. However, this dissertation may not reveal any country in the West African sub region that has promulgated and is implementing a maritime cabotage regime; apart from Nigeria, Greece and the United States of America have “strict” Cabotage Laws whereas India, the Philippines, Malaysia, Australia and Brazil, among others have liberalized cabotage laws.

As legislation, it is purely for the regulation of domestic shipping as opposed to international shipping. In this regard, it includes navigation and trading in the nation’s inland waterways. There are basically two types of cabotage regimes - strict and liberal cabotage laws. The adoption and application of any of these types by nations are determined by national economic and shipping interests, the socio-political, and other local conditions. In a “strict” maritime cabotage legal regime, three elements of restrictions apply. These are the domestic shipping trade which is restricted to ships built, owned, crewed and operated solely

by citizens. The object of strict cabotage policy is to exclude foreign-built, foreign-owned, foreign-crewed and operated vessels. Details of the laws are as per annexure attached.

2.1.1a Cabotage Laws in other Countries

As it is now, there are strict cabotage laws and relaxed or modified or liberalized cabotage laws which are being applied by different nations as dictated by their national and commercial shipping interests and local situations. In a “strict” maritime cabotage legal regime, three elements of restriction are that domestic shipping trade is restricted to ships built, owned, crewed and operated solely by citizens of the country applying the cabotage policy to the exclusion of foreign-built, foreign-owned or foreign-crewed and operated vessels. Maritime cabotage laws are said to be relaxed, modified or liberalized if those three elements are not strictly enforced or there are some levels of foreign participation either in the ownership or building of the ships used and nationality of the operators involved, or foreign-registered ships’ involvement, in a nation’s coastal shipping.

(i) United States of America (USA)

In the USA, a “strict” cabotage policy is implemented by virtue of a communication of some of its shipping laws including “The Jones Act” (*Cf. section 27 of US Merchant Marine Act of 1920 public law 66-261, also known as “The Jones Act”*), (Asoluka, 2003. p. 71). It 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 between US ports are carried in US flagged ships, built in the USA, owned by US citizens and crewed wholly by US citizens. The other legislation is the 1886 US passenger services Act which states that no foreign vessel shall transport passengers between ports or places in the US and imposes a penalty of US \$200 for each passenger so transported and landed. Under the US Coastwise Trade Vessel Requirement (46 U.S.C 3704 (2000)), a vessel which does not have a segregated ballast tank, a crude oil washing system or an inert gas system, may not engage in coastwise trade. Any vessel not wholly owned by a person who is a citizen of the US and not having in force a certificate of documentation issued under section 12106 of title 46, US code, is barred from towing any vessel other than a vessel in distress, from any port or place in the US to another port or place within the US and no foreign vessel is entitled to engage in salvaging operations on the Atlantic or pacific coast of the US or its territorial waters unless inter-alia satisfactory investigation shows there is no suitable vessel wholly owned by a US citizen available to affect the operations in that locality (e.g. use of foreign vessels in the United State Ports (46 APP. U.S.C. 316 (2000)).

In fact, before the Jones Act (an Act so called after its sponsor from the state of Washington, Senator Wesley I. Jones), the US had forbidden foreign ships from trading within its coast since 1817. The US merchant marine Act of 1936 also allows the government to bar foreign vessels that have been built

cheaply by means of subsidy if they operate in the US domestic trade.

In the US, the Maritime Administration (MARAD) actively promotes and develops the US domestic merchant marine in support of the Department of Transport's Strategic goal of "Advancing America's economic growth and competitiveness domestically and internationally through efficient and flexible transportation.

The strictness of the US cabotage regime can not, however, be said to be absolute in view of some exceptions and relaxations now being granted its application in certain cases by some US legislations. For example, in 1999, a Federal Law was promulgated to allow a person to operate a foreign-built cruise in the US coastwise trade only if the person had entered into a binding agreement for the delivery of two US-built cruise ships thereby making it possible for temporary employment in US domestic waters of a foreign-built vessel whilst new US built cruise are being built. Upon the fulfillment of the requirements of the Puerto Rico Passenger ship Act (*Cf. Public Law 98-563 (46 App. U. S. C. 289C (2002))*) passengers may be transported on passenger vessels not qualified to engage in the coastwise trade, between ports in Puerto Rico and other ports in the US, directly or by way of a foreign port, notwithstanding the provisions of any other law.

A foreign registered vessel may operate within the US waters on an emergency or temporary basis for the purpose of

recovering, transporting and unloading in US port, oil discharged as a result of an oil spill under certain conditions (*Use of foreign Registry Oil Spill Response Vessels, section 1117 of public law 104-324 of 19th October, 1996*). Moreover, notwithstanding the Jones Act and other US cabotage laws, a certificate of documentation with a coastwise endorsement may be issued by the Secretary for Transportation to a foreign vessel to transport liquefied natural gas or liquefied petroleum gas to Puerto Rico from other ports of the US under certain conditions (*Cf. Vessels to Transport LNG to Puerto Rico section 1120 (f) of public law 104-324, approved on 19th October 1996*), whereas some US legislations allow annual permits to be granted to Canadian vessels to run passenger services from port to port in the US until such a time as passenger service may be established on those routes by US vessels. (*Cf. Miscellaneous Provisions: 46 APP. U.S.C. 289A (2000), 46 APP. U.S.C. 289B (2000)*) (*As in Asoluka, 2003, pp.72-73*).

So with the above and other shipping laws, the movement of goods and passengers within the US territorial waters and coastwise trade are in the hands of US citizens and US ships, except where there is an absence of such service by US vessels, or in respect of emergency on certain situations where it concerns Canada or Puerto Rico. The laws are deliberate US protectionist policies put in place in order to safeguard its domestic maritime industry from foreign participation, control or domination at the expense of its nationals and its domestic shipping industry. Now, domestic waterborne transportation contributes US \$7.7 billion annually to the US gross domestic

product in form of freight revenue (*Cf. Miscellaneous Provisions: 46 APP. U.S.C. 289A (2000), 46 APP. U.S.C. 298B (2000) (As in Asoluka; 2003).*

It is believed that, up till today, and notwithstanding globalization and anti-trust (i.e. competitive) initiatives and promotion of, and by the US, and the US backed World Trade Organization, there is immense support in the US from its policy/law makers and key figures from the protection and retention of its strict cabotage laws without any reforms or relaxation whatsoever. As a case in point, between 1995 and 1998, there were pressures especially by the Jones Act Reform Coalition on the US Government to repeal or at least modify the Jones Act or reduce its effect through new laws that would permit freedom of transport, but at the public hearing and, based on the outcome of the debate, the efforts failed woefully and, because the proponents of the retention of its strict cabotage regime succeeded, the status quo remained. 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 protect US ships carrying on domestic commerce. The MCTF has also played a major role in defeating recent efforts to relax the US cabotage laws. On a statement made on 22nd May, 2000, former US Vice President, Albert Gore Jr. said, "The Jones Act was the foundation of the maritime industry and an essential fabric of US economic and national security." Similarly, the US President, George W. Bush supported the Jones Act because he saw the Act's contributions to the growth of the US domestic

fleet, economy, defense and international trade (*Asoluka 2003, P.73*).

In a similar vein, ex-president Clinton also supported the Jones Act. Moreover, the 105th US congress adjourned in October, 1998 after giving strong support to the Jones Act with the House's Concurrent Resolution 65. Although the senate and House committees as well as some subcommittees 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 at the committee stage relaxing the US cabotage laws. A vote of confidence was thus given to re-affirm the cabotage laws.

It is therefore not surprising to see that in 1999, the US participated in a trade policy review conducted under the auspices of the WTO covering a lot of US trade measures and practices including maritime transportation. MARAD (*Cf. MARAD 1999; US Department of Transportation Maritime Administration, Publication of May, 2000 Pg.38*) helped to prepare responses and positions on US maritime programmes and policies including cabotage and cargo preference. (*Asoluka 2003, pp.73-74*)

(ii) Greece

Greece has a restricted cabotage principle in which Greek passengers and cargo cabotage are reserved for Greek vessels. This is pursuant to Article 165 and 166 code of Public

Maritime Law CPML) 187/93, although the legislation is now partly adapted to Regulation 3577/92 of EU on liberalized cabotage for the EU. Other EU vessels are now allowed in non-strategic mainland trades with vessels over 650 GT and waivers can be granted on the condition of reciprocity. As for the crew, 100 percent of the shares of the vessels must be owned by Greek nationals or by Greek entities, more than half of whose capital is held by Greek nationals. In its judgment of 27th November, 1997, case C-62/96, the court of Justice of the EU criticized Greece for the failure to fulfill its obligations on account of its Articles of CPML, which provided for such measures.

(iii) Denmark

Although Denmark abolished the reservation of cabotage trades with vessels less than 500 GRT to national carriers in 1994 and permitted foreign vessels to participate in its domestic shipping, (*Cf. Danish Decree 658/94*), passenger vessels still remain excluded from Danish cabotage and captains of the cabotage vessels must be Danish nationals and vessels owned by Danish or EU persons or concerned companies must be managed from Denmark.

(iv) India

As a result of relaxing its cabotage laws in 1992, India allowed for five years foreign shipping times only to consolidate export containers at an Indian port and trans-ship 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 years period

not extending this provisions. Whilst foreign shipping lines have been lobbying for total freedom to operate coastal services in Indian 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 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 ship owners, shippers and chairman of ports trusts for the resolution of the matter.

(v) The Philippines.

In the Philippines, the cabotage laws (*section 1009 of the Tariff and customs code of the Philippines*) (*as in Asoluka 2003, P.75*) allow 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 made up of some organs in the implementation of the said section 1009.

(vi) Australia

In Australia, cabotage is based on the Navigation Act of 1972, customs requirements and immigration laws, and 90 percent of its coastal trade is by Australia-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 wind back and removal of its cabotage laws. After the report, the Government 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 for 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 problems, oil spillage, substandard ships of flag of convenience shipping, and threats to road transportation. The Union consequently took the matter to court.

It is however interesting to note that in a paper released with the approval of the Australian Transport and Regional Services Minister, Mr. John Anderson on 24th November, 2000, it is 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.”

(vii) Malaysia

Malaysia is another country whose relaxed cabotage laws permit foreign registered vessels to be temporarily licensed by the Domestic Shipping Licensing Board (DSLBB). Established under section 65B of the Malaysian Merchant Shipping Ordinance, 1952, the Malaysian laws regulating domestic shipping are the merchant shipping Ordinance and its 1977 and 1984 amendments. However, in 1994, certain amendments were made to the ordinances which subsequently were included in the merchant shipping Act (Amendment) 1994 to carry on coastwise trading where the Malaysian ship owners Association (MASA) continue in writing that there are no available Malaysian vessels to carry the cargo concerned. Available data show that this is most pronounced in the domestic carriage of chemical and oil. The DSLBB regulates and controls the licensing of ships engaged in domestic shipping and issues three types of licenses, namely, unconditional licenses, conditional licenses and temporary licenses under stipulated conditions to be met and based on applications by the parties concerned. The first two licenses are issued to only Malaysian-owned companies; whilst temporary licenses are issued to foreign vessels to meet shortfalls in local tonnage (*Asoluka 2003, P.77*).

The Malaysian cabotage policy was liberalized between Penang and Port Klang and between Johor/Kuantan and Port Klang to allow foreign operators carry cargo in transshipments as part of the international leg of their container transportation. This was strategically aimed at port Klang's competition with Singapore and meeting national aim of making Port Klang a loading centre. However, there are complaints by the Malaysian Ship owners Association (MASA) concerning circumvention and manipulation of the cabotage system by Malaysian shippers, who falsely mislead the DSLB and cut as "fronts" for foreigners (Ibid).

(viii) Brazil

In Brazil, while goods alone and later goods and passengers in cabotage trade were for only Brazilian vessels (*Cf.. Brazilian Constitutions of 1946 and 1988 respectively*), foreign vessels were in August 1995 Federal law 9,432/97 allowed for cabotage shipping, only if they are chartered by Brazilian shipping companies through bareboat, time and voyage charters. However, as a result of the 7th constitutional Amendment in August, 1995, foreign cruise vessels were allowed to use coastal and inland routes thereby opening its 7,480 kilometre coastline to luxury transatlantic liners (*Cf. a paper titled, "Current cabotage issues in Brazil" by Alexandra Catanante delivered at the IBA conference in Cancun, Mexico in November, 2001, (as in Asoluka, 2003 pg.77).*

In a nutshell, the type of maritime cabotage law promulgated by each country is dependent on the national, strategic and

commercial interests of the country and the economic need for the Government to guide and to protect an “infant” domestic shipping industry from foreign competition so as to give it enough room, capacity and control to become as sufficiently economically viable as to be able to withstand foreign competition.

2.1.1b The Evolution of Nigeria Seaports

A port as a melting pot is a nodal point where several maritime activities in the intermodal transport chains are interfaced. In other words, port is a conveying point for break-bulk, transshipment, storage, bulking, repackaging, dispersed operations, warehousing, various administrative activities, boarding, discharging and delivery of cargo (*Paper presented by Dr. (Alh.) W.A. Kareem MD/CEO K. Marine and Business Network Limited, at a conference organize by LBS, PAN African University in December 2005*). The traditional roles of the port are gradually moving away from break-bulk and mere-land/sea interfaced to those of integrated platform and logistics, which facilitate international trade and services.

As it can be seen, meaningful international trade of any significance can not take place without the seaport. This is equally true of the Nigerian situation. Historically, Nigeria's involvement in international trade can be traced to the activities of the Portuguese traders led by Prince Henry the Navigator who landed at the Bight of Benin in 1472. This was followed about the end of the 17th century with the arrival of the British,

French and other Portuguese merchants who established trading relationships with the natives of the Niger Delta. These foreign traders employed their vessels to convey various items of merchandise which they exchanged for local products such as pepper, Ivory, palm oil, to mention but a few.

This trading relationship between the foreign traders and the locals gave rise to the establishment of ports at Forcados, Bonny, Akassa, Brass, Calabar and Opobo. By the 19th Century, the number of ports in use in the order of patronage and importance included Warri, Burutu, Sapele, Bonny, Degema, Calabar, Brass, Lagos, Akassa, Bakama and Buguma.

Initially, the Lagos port was not as busy as the others because of lack of business and the shallow Lagos bar which did not permit bigger vessels to come in. This situation later changed, however, with escalation of the Yoruba wars which brought about large number of slaves to be shipped to the West Indies through Lagos port. By 1862, not less than 58 British and 41 other foreign vessels had entered Lagos port. In 1893 the port received 235 and 211 British and other foreign ships respectively. In 1907, the Lagos bar was dredged from 9 to 14 feet to allow for bigger vessels to move along the coast (*Ibid.*)

With the abolition of the slave trade otherwise known as human cargo, creation of new nation state and political independence trading by barter and dealing in human cargo or slave cargo gave way to modern methods of international trade of today.

People now trade across the world and settle themselves through monetary instruments such as letters of credit, deferred payments, cheques, credit cards, money transfers, etc.

As might have been noticed, port development in Nigeria is an age long phenomenon, and the process was fraught with various problems. For instance, the initial attempts to provide berthing facilities to ocean going vessels met with obstacles as considerable Littoral drift along the coast and the constantly shifting of the bar channels at the Lagos Lagoon entrance, made ship entry difficult. However, the first major breakthrough came in 1906 when dredges were employed to work on the bar.

In the same year, consignments of stones were railed from Abeokuta to Lagos for the construction of the first East Mole. With the improved drafts at the bar entrance a first mail boat/ship called M/S “Akoko” with a draft of 5.64 metres entered the Lagos Harbour on 1st February 1914. Two months later, vessels started to use the facilities provided at the customs wharfs on Lagos Island along Marina. Although decision to develop Apapa port was reached in 1913, work did not commence on the first four long water berths of 548.64 metres long until 1921. In 1948 an additional 762 metres of berthage were built as a continuation down stream to the first four berths. Similarly, about 41 hectares of reclamation behind the wharfs were formed to accommodate transit sheds, warehouse and marshalling yards.

It was about the first quarter of the 19th century that work on the Port-Harcourt wharves which Lord Lugard commissioned actually commenced. With the completion of the railway line to Enugu in 1916, 6 berths for colliers was built at Port-Harcourt for loading of coal as an export cargo. The first major extension work to the Port Harcourt port comprising four berths of 1,920 feet long was carried out in 1954 at the cost of £4million (*Ibid*).

2.1.1c The Nigerian Maritime Sector Reform.

The major planks or components of the Nigerian Maritime sector reform would centre on the ports, Stevedoring practices or port labour, customs procedures, the establishment of Inland Container Depots and the cabotage, to name but some few salient points only.

(i) The Ports Sector Reform: - As has been observed, one can recall the ages of most of the Nigerian ports and their being established and managed by Government or public sector. Some of them built between 84 and 51 years ago i.e. Lagos and Port Harcourt ports respectively, had not undergone any major reconstruction or structural repairs to date. This could possibly explain in part why some of these ports fail to perform optimally today. For instance, during the period of their construction, slave cargo, bulk and conventional general cargo as opposed to containerized goods, formed the major types of cargo for which the ports were planned or designed. Ever since, and in view of revolution brought about with introduction of containerization, ships design and cargo configuration have all changed. What Nigeria has been trying to do was to

adopt the old ports to suit the handling of modern ships and cargo. This approach could only succeed for a while not forever. This partly accounts for the gross inefficiency which we all now observe with our ports. It may be amazing to learn that the Tin Can Island Port (TCIP) which has often been described as a modern port was commissioned in 1977 i.e. 28 years ago. Of course when compared with the Lagos or Port Harcourt ports, TCIP is a modern port indeed.

In fact, what informed Government's decision and desire to embark upon port reform in Nigeria is the dismal failure of our ports and their operational managers to perform most efficiently and cost effectively. At a time, the government was squandering billions of tax-payers' money to support and salvage the non-performing public utility called Nigerian ports. Successive Governments continued to pump huge amount of money which their collaborators siphoned away in the name of dubious contracts to supply cargo discharging plants, fire fighting equipments and communication or security gadgets; most of which were never supplied, or even if supplied not functional.

That was the situation before the current Government took over in 1999. Having decided not to continue with unholy acts or sins of the past administrations, by throwing money into a bottomless pit called ports, the Obasanjo administration courageously decided to embark on the new port reforms.

Some of the reasons given for the port reform agenda of the Government are:

- (1) Unduly long turn around time in our ports.
- (2) Insecurity of cargo at the ports
- (3) Strangulating and uncontrollable activities of dockworkers.
- (4) Forceful imposition of excessive labour on ships.
- (5) Ubiquitous presence of multiple agencies in the ports.
- (6) High level of corruption in the ports
- (7) Excessive and uncompetitive charges.

The main objectives of Government port reform measure can therefore be summarized to include the desire to achieve fast cargo clearance, quick turn-around time for ships, removal of multiple agencies from the ports, facilitation of trade and making Nigerian ports competitively attractive to shipowners, investors and port users generally. These objectives can be summarized thus:-

1. To increase efficiency of our ports operations.
2. To reduce cost of port services or cargo.
3. To discourage diversion of ships and cargoes meant to Nigeria to neighbouring countries.
4. To stop spending public funds on the non-performing ports, instead such funds should be channeled to the construction of roads, schools, hospitals, etc.

5. To boost economic activities, accelerate the country's development and generate employment opportunities.
6. To make the Nigerian ports the hub of international freight traffic and trade in the West African sub-region.

It is further understood that, the port sector reform agenda of the Government involves institutional restructuring of NPA including adoption of Landlord port concept, decentralization of existing NPA through creation of two zones, with each being headed by an executive director; active participation of private sector investors who are to inject new funds with which to run the ports efficiently (*Kareem, 2005 P.12.*)

(ii) The Dock Labour Reform:-

In view of the chaotic situation which the dock labour system of the old past typified or represented, the present administration decided to reform it. Without this reform, it was considered that the overall port reform would be jeopardized. It is an open secret that Nigeria's dock workers in the eyes of shipowners and agents patronizing our ports were lazy, unproductive and wild. They were unlike those in Ghana, Cotonou and other West African Ports. Nigerian dockworkers were in the habit of threatening and delaying ships unjustly, apart from being expensive. It was to address these issues and other related matters that the Joint Maritime Industrial Council (JOMALIC) was established to bring sanity into the country's dock labour industry. The re-organization that took place involved registration of dockworkers employers and of dockworkers; improved workers' pay and welfare; abolished

practices of labour overbooking with a view to cheating the system. The organization also stopped the use of middlemen and supervisors who often collected money on behalf of some workers which was never paid to the bonafide dockworkers.

With this reform, sanity has gradually returned to the stevedoring industry in Nigeria. This will definitely be improved upon in the next concessioning regime where the labour employment, welfare, pay and supervision, will be under the control of concessionaires. This would no doubt improve labour productivity in our ports as well as bringing about better industrial relation between both labour and employers (*Ibid*).

(iii) Port Concession – As a Reform:-

Various past governments in Nigeria had tried to reduce their stronghold and grip on the running of ports for a number of reasons. Some of them had realized that Government was not the best business manager. In many public enterprises such as NEPA, NPA, and other Public Utilities, the primary objective of Government was not to make profit, but just to ensure provision of the so-called “essential” services; hence colossal funds had to be sunk into these enterprises without good results.

On realizing their failure to run public enterprises profitably and efficiently some past governments had tried to privatize, commercialize and deregulate these enterprises. For instance, at one time, NPA was directed to adopt

commercialization and privatization for some of its services. The exercise failed woefully because the civil service environment and regulations within which NPA must operate did not allow for radical change expected of private sector enterprises. For example, NPA was and is still being seen as an extension of the ministry of Transport, so much so that NPA could hardly take any major decision affecting its operation without approval of the Minister of Transport.

Due to all the forgoing constraints, running the NPA was becoming very expensive, inefficient and uncompetitive. This situation led to ship and cargo diversion to Cotonou, Togo etc. Again not a few of the nation's port infrastructure and facilities are aging, and call for rehabilitation or total replacement, which the government lacks the funds to do so. These and other considerations informed the Government's final decision to embark on port concession. In arriving at this decision, Government feels that the word "concession" should be more appealing or friendly to Nigerians, especially the labour, than the words "privatization", "commercialization" and "deregulation" all of which are capable of being misunderstood. Even with the word "concession" the labour has gone to town to announce and accuse the Government of selling the ports for a peanut ((*Alh*) Kareem, 2005. P. 15).

The above scenario then calls for the true meaning or definition of port concession as it applies to Nigeria. Simply put, port concession implies the leasing of Nigerian ports and their facilities to private port operators called concessionaires

for agreed fees and definite periods, ranging between 10 and 25 years. While the lease agreement subsists, concessionaires will run the allocated ports, berths or terminals; maintain the facilities, provide cargo – handling plants and equipments, discharge, loading and delivering cargoes, and pay the agreed lease fees to Government. (*Ibid*)

From now on and until the expiration of concession period, the concessionaires are allowed to run their facilities unfettered, duly protected under the law. Instead of committing huge public funds to the maintenance of ports or facilities, Government will earn revenue from the ports concession which will be channeled to the provision of social amenities for Nigerians i.e, schools, hospitals, road, employment etc (*Ibid*).

There are other numerous benefits which will accrue to the nation by way of well – managed ports, berth or other port facilities. These include increased cargo throughput and ship calls in our ports, efficient services to importers and exporters, shippers, industries, provision of employment opportunities, increased revenue by way of customs duty, port charges and statutory taxes. Port concession will also bring about injection of new funds, expertise and professionalism into the management of our ports and port related facilities.

It is equally envisaged that with the port concession, better planning would be witnessed in our ports thus avoiding possible congestion and preventing diversion of ships and cargoes to neighbouring ports.

The point that needs to be emphasized here is that port concession is not outright wholesale of the ports, as already explained, some people have been peddling the rumour in some quarters. Concession here means, having a leasing arrangement which is meant to benefit Nigeria and Nigerians.

Concessionaires that have so far emerged include both Nigerians and foreigners. Besides, Nigeria is not the only country in the world where port concession and privatization have taken place. The United Kingdom, Malaysia, Chile, Thailand, Columbia are far examples of countries that have privatized or concessioned their ports. Going by their post privatization and concession performance records, they are all very successful. Therefore, we have no reason to doubt the fact that Nigeria's case will not be different (*Dr (Alh) Kareem, 2005, P.16*).

(iv) Reform of the Nigeria Custom Service:-

Part of the general maritime sector reforms extended to the Nigeria Customs Service as a matter of course. The reason for this is not far fetched. No matter how successful the port reform measures may be, unless the customs is equally reformed, these port reform measures may not impact positively on the economy as a whole. For instance, if ships came and discharge within a few hours and leave; NPA sorts out the cargo or containers speedily in readiness for customs examination and eventual delivery to consignees; unless the

customs processes cargo documents, conduct cargo examination and finally release the cargo, it would still remain in the port despite the NPA and shipping companies excellent performance. Needless of taking about other vices for which some of our customs men are notorious.

The Government, having appreciated this fact directed that customs reform should form part of the general maritime sector reform. Truly, our customs men and women are working under very difficult conditions – poor remuneration, lack of modern office equipments, vehicles, and suitable office accommodation etc. Under this condition, it would be difficult to get the best output from any worker, customs men and women including the police. Some junior customs men often claim that they buy their uniforms, shoes etc on their own, if official supplies are not forth coming. With the reform measures going on within the Nigeria Customs Service today, the story will be different. (*DR. (Alh.) W. A. Kareem, 2005, P.17*).

Government has approved that a portion of revenue collected be given to customs as an incentive to motivate them. This money is to be shared among the officers and men of the organization of ASYCUDA, which is also undergoing upgrading, the customs is substituting computer for manual work they used to do mechanically. Furthermore, customs have been provided with other working tools apart from computers. They have patrol vehicles, boats, communication gadgets, arms and ammunitions to combat smuggling

activities. Time and money are being expended to train and retrain all categories of customs staff with a view to improving their efficiency and changing their orientation or attitude to work. Annual seminars, workshops, radio and TV, programmes are undertaken by the customs to enlighten importers, exporters and other members of the public about the trade facilitation role of the Nigeria Customs Service. Also as part of its reform measures, customs have replaced what it used to call "LONG ROOM" for the processing of cargo documents with Customs Processing Centre (CPC) which is much faster and computer based, using ASYCUDA system.

While it is difficult to give a clean bill of health to the customs as at yet, a lot of improvements have been noticed in its activities. For example, it has recently sent out circulars to all its formations to create a fast track clearance arrangement, especially for manufacturing industrial companies and other importers with heavy consignments. By this arrangement, regular heavy importers, with outstanding clean records are allowed to remove their containers from the port immediately they are discharged from the ships and carry them to their warehouses under bond or to any approved customs bonded warehouses where such goods will be examined and released. This is done to decongest the ports. What remains now is for the genuine manufacturers and industrialists, especially members of the OPS to respond to this measure, which is aimed at helping them? (DR. (Alh.) W. A. Kareem)(*Ibid*).

(v) The Establishment of Inland Container Depots in Nigeria:-

In an attempt to carry further its maritime sector reform, in order to enhance productivity hence profitability, the Federal Government of Nigeria gave its approval for the establishment of Inland Container Depots which are also referred to as Inland ports. Just like the case of port concession, ICDs are to be established on Build, Operate and Transfer (BOT) basis. In this case, the private sector investor who is interested would provide all the funds for the handing and running of the port or depot. He will run it for a period of 25 years in the first instance, but with the option of renewing his interest for another 25 years which makes the total period allowed to be 50 years. The logic in this arrangement is that, the investor will have ample time to recoup his investment and make reasonable profits.

At the expiration of this lease period, the port will revert to the government as the ultimate owner, without having to pay any money to the original investor. Furthermore, to guarantee private investment in the ICDs, Federal Government or any of its agencies are precluded from having any shares. What is allowed however is that the host Government where the ICDs is located is allowed to hold maximum shares of not more than 20 percent. The host Government, on behalf of the Federal Government, is also obliged to acquire about 50 hectares of suitable land free of cost to the investor, for the project (*Ibid*).

Inland Container Depot or Dry port is like a seaport in all respects except that it is not located near the sea or ocean – hence the name dry port. It has all the features of a seaport such as customs facilities for cargo documentation, processing, examination and release. Shipping companies, freight forwarders and other port personnel are present there.

As a working definition one can adopt the one given by the UN (1982) as; “A dry port or Inland port is an inland terminal to which shipping companies issue their own bill of lading for import and export cargoes, assuming full responsibility of costs and conditions.” This definition permits the establishment or location of a dry port within a country with seaports or in a land-locked country. The only condition is that, there must be a rail or road link that will connect the seaport to the dry port for the purpose of movement of cargoes. The idea of Inland port is to bring port services to importers, shippers and other stakeholders at points nearest to them without having to go to the seaport for the same services. Manufacturers and industrialists do not have to go to the seaports for their raw materials; spare parts for their machinery etc. Similarly, their finished products targeted at the international export market will be accepted at the dry port, thus saving the exporters the trouble of traveling to the seaports (*Ibid*).

The way goods meant for the dry port will be handled is that, when such goods arrive at the seaport they will either be railed or transported by road to the dry port under customs

bond and security escort. It is at the dry port that all documentations will take place, including customs examination, final release and delivery. No customs documentation will be done at the seaport. The containers manifested for ICD will arrive there with container security seal intact.

The establishment of an Inland port has a number of advantages, amongst which are:-

- (a) Decongestion of seaport since goods destined for the dry port will be moved immediately on arrival.
- (b) Reduction of costs through elimination of unnecessary delays, rent and demurrage payment at the seaport which will make the landing costs cheaper. This will enable the entrepreneur to sell the goods cheaper and quicker with a higher turnover.
- (c) Ease of cargo clearance at the dry ports. All officials for cargo examination release and delivery are contiguously located, thus reducing transaction time and money – which is another plus to the Nigerian entrepreneur.
- (d) Easy access or reception of cargo by importers, industrialists, manufacturers who would have otherwise headed for the seaport for the same purpose.

- (e) Elimination of warehouse costs at the seaports, as importers are not responsible for the cargo costs until it arrives at the dry port.
- (f) Corruption and other malpractices which are common the seaports are not likely to be permitted at the dry ports, being a private sector run enterprise.
- (g) Promotion of export cargo through the use of empty containers that would have been returned to the dry port after consignees have received their goods.
- (h) Generation of employment for the people who are located around the inland port e.g. Entrepreneurs, transporters, freight forwarders etc.
- (i) Promotion of entrepreneurial growth and industrial development—the entrepreneur and industries/manufacturing companies which receive their goods and raw materials in time at reduced costs would be in a position to produce and sell more, (most likely at reduced prices for better turnover). They may import goods and raw materials as regularly as they need without having to think of the headache at the seaport.
- (J) Dry ports would promote non-oil export and enhance earnings, hence the improvement on the nation's economy.

- (k) Inland ports will improve revenue of government through customs duty, levies, income taxes etc.

Ideally inland ports have become a global phenomenon which can be hardly ignored. That Nigeria has joined this global train is commendable. As at date approvals and operating licences have been granted to 4 dry ports located at Oyo, Bauchi, Abia and Kano States, each at different stages of development (*Dr. (Alh) Kareem, 2005, PP.19-22*).

2.1.1d The Challenges of Maritime Sector Reform.

The present administration which conceived and midwived the various reforms in the maritime sector deserves commendations for its courage, vision and determination. Faced with daunting challenges inherent in these reform measures many Governments with less courage or vision or zeal would have chickened out. Nonetheless in order to overhaul the entire maritime sector and prepare it for reliably consistent efficiency, the reform would have gone one or two steps further. A case in point: the freight forwarding practice in this country requires closer examination and reform. The same is true of shipping companies, issue of seafarers and even the entire haulage system as it relates to the port business.

Again, may be, the government does not want to face all these reforms simultaneously. We agree that a gradual approach to these issues may be sensible. The important thing however is for the Government not to forget that there is

an unfinished job to be done in order to put Nigeria's maritime sector on a very strong footing (*Kareem; 2005 P.25*).

Without having any doubt, the challenges in the reformation of the Nigerian maritime sector are gargantuan and daunting, partly because of the human factor element involved. To attempt to accord a fair treatment to the various challenges that confront the Nigerian maritime sector reform today will require at least a full thesis. Be that as it may, some brief comments on these challenges could be mentioned even if only in passing. These may include but not limited to the followings:-

(i) Port Sector Reforms:-

These reforms, as good and well-desired as they may be efforts must be made by all and sundry, most especially the Federal Government, to see them through. Besides we must all see to it that the reforms are sustained. They must not be allowed to suffer policy reversal or policy inconsistency. All eyes of the world are on Nigeria and we must not let ourselves down by tinkering with the reforms in any negative way.

(ii) Dock Labour Reform:-

With deregulation of the port labour reform both the Nigerian Ports Authority and Joint Maritime Labour Industrial Council (JOMALIC) should avoid interference with the labour matters. The appointment, replacement and termination of labour should be the full responsibility of

their new employers i.e. port concessionaires. But for purposes of security, concession areas should pick their stevedoring contractors and dock labour from the lists of those who have been duly registered by JOMALIC.

Ministry of Transport or any Government agency should not compel concessionaires to appoint any particular contractor or dockworker. In order to get them purged of their previous bad habits and attitudes, concessionaires may do well to give orientation training to the new sets of contractors and labour in their employment. All these are targeted at improved labour productivity and maintenance of cordial industrial relations.

(iii) Port Concession:-

The success of port concession will be judged against ability of concessionaires to discharge and load cargoes expeditiously; berth and sail ships promptly; bring Nigeria bound ships and cargoes usually diverted to neighbouring ports back to Nigerian ports. For all these to happen, our ports must have adequate cargo – handling plants and equipment; they must create adequate warehouses, stacking areas, berthing facilities and charge competitively friendly cargo charges. It may be a good idea for each concessionaire to have empty containers stacks as distinct from laden ones to facilitate easy port operations. There must be free flow of goods from the port to bonded warehouses, inland container depots or dry ports. Trailer packs should be located outside the port

area from where vehicles whose turn it is to load will be invited or called in by the use of radio, telephone or GSM communication. Soliciting of cargo by truck owners inside the port should be discouraged. Same may be done for empty containers which will be brought to the port only when they are ready to be shipped or loaded.

(iv) The Nigeria Customs Service Reforms:-

The customs should accelerate and modernize its computerization process – ASYCUDA. For it to be in line with what is recommended by the World Bank and other international bodies, NCS ASYCUDA project should be upgraded to step II i.e. ASYCUDA plus, plus with what this may mean. Furthermore, customs must purge itself of corruption and cultivate the culture of efficient service delivery, probity and trade facilitation. To promote an all – round efficiency, customs must interconnect with NPA, shipping companies, freight forwarders, terminal operators, dry port operators, freight forwarders and other important shareholders such as Manufacturers Association of Nigeria (MAN), NACCIMA etc, it is important for NCS to decentralize its computer processing centre (CPC), or computer processing Unit (CPU). A separate CPU or CPC may be created for export cargo. The fast track cargo clearance system for manufacturers, industrialists and heavy importers recently introduced by the customs must be sustained. This system allows goods for this category of heavy importers to be transported straight to their bonded warehouses under

escort, immediately these goods are discharged from ships. Customs examination and release will take place at the importers' premises. This accelerates delivery, avoids delay and prevents port congestion.

In the same vain, once cargo is released by an authorized officer, no other officer should stop such cargo unless there is an important reason to do so. And finally, Government warehouse for overtime cargo should be located outside the port areas in view of large space usually consumed by overtime cargo while lying in the ports for years.

(v) Dry Port or ICD as a Complement to Port Reform:-

As already explained, dry port or ICD is an extension of the seaport. Some of the cargoes discharged at the seaport are immediately transferred to the dry port which is usually located at a point very close to the importers or consignees. This dispersal of goods helps to decongest the seaport and facilitates port efficiency. Inland container depot also acts as a buffer for the seaport as empty containers may be held back at the ICD to load export cargo for shipment at the seaport.

Amongst the greatest challenges of the ICD is to continue to support the port. This consists the ability of Nigerian Railway Corporation to interface between the ICDs and the ports. Considering the poor state of railways in Nigeria, not a few people are wondering if the Nigerian

Railway Corporation will not fail the nation in this crucial assignment.

As to be expected, some industries with bias for import business will develop around ICDs to lower their production cost and maximize their returns. Sustainability of such industries will largely depend on the continued existence of the ICDs. This is yet another challenge not only for the ICD operators but also the Government as well. Moreover, being a product of BOT which is a new method of project financing in Nigeria, all hands must be on deck to ensure the success of ICDs here. If they fail, either as a result of policy reversal or any other reason, no investor, whether foreign or local will be encouraged in future to embrace BOT arrangement. Therefore, we fervently pray for the success of ICD project and BOT financing arrangement in Nigeria (*Dr. (Alh) Kareem, 2005, PP.2*).

2.1.2 The Nigeria Entrepreneur.

An entrepreneur is one who steps out, looks forward for business opportunities which have not been grasped and acted upon by any one, he then renovates/add value to such opportunities, by creating something new added to the previous one, so as to satisfy his customers, and while doing so, he makes profit (*Gbashama and Akpa, 1998 p. 10*). The entrepreneur is seen to be creative, innovative, energetic, versatile, ready and willing to invest in new business ventures.

An entrepreneur is to some scholars, one who organize wealth for the production of further wealth. This he does by the combination of the other factors of production. Still to other scholars, an entrepreneur is seen as the only factor of production that appears distinctive by its qualities. It is the only factor of production that exerts influence on followership in conducting and concluding a business with the sole aim of achieving a pre-determined goal (*Gbashama and Akpa, 1998, P11*).

The Nigerian entrepreneur, in a bid to perform positively in the cabotage trade, must embrace completely, not in parts, the aforementioned substances in order to live above board. He should be seen as one who has the zeal, determination, ability, energy, willingness, knowledge, and more of all, capital, to drive into this business opportunity, utilize it very well in order to satisfy the customers, while he makes profit. This profit will in turn improve his standard of living, and at the same time, improve the economy of the nation.

2.1.2a The Functions of Nigerian Entrepreneur.

The Nigerian entrepreneur, just like other entrepreneurs worldwide have similar functions, amongst which are:-

- (i) Seeking of Business Opportunities.** As per the definition, an entrepreneur is one who goes out to seek business opportunities, which have not yet been grasped and acted upon by any one, when he discovers such an

opportunity, he now takes it and works on it. That is, innovate the opportunity or add value to it. This he does in order to entice his customers and satisfy them, and while he does this, he makes profit.

(ii) Risk Bearer:

The Nigerian entrepreneur is seen as a risk bearer. That is to say, whatever business opportunity he has had and has acted upon it, to make it look anew, in order to entice consumers, if he eventually does not sell or recover the cost, he loses. In this case, the entrepreneur bears the risk. Not just that alone, assuming while the entrepreneur was busy working on the product, in order to make it look good and more attractive and before he could re-introduce such a product into the market, the law of the land has been passed banning such a product from circulation and consumption. The entrepreneur then bears the entire risk.

(iii) Funds Provider:-

The entrepreneur provides funds for the start –up and down to the day – to – day running of the business. He alone or with his family members, friends or loans from which ever source provides the funds for the running of the enterprise. This might be from the entrepreneur's previous savings, retirement benefits, from friends and/ or banks. But all we know is that the funds provision duty is the function of the entrepreneur who sources for same

and provides for the day-to-day, continuity of the enterprise.

(iv) Co-ordinator of other Factors of Production:-

The entrepreneur acts as the co-ordinator of other factors of production by combining labour, capital, land in the right proportion in order to maximize production at the same time to reduce cost and in the same vein make profit. This the entrepreneur does by organizing labour, both skilled, semi skilled and unskilled in the right proportion to the available capital on the available portion of land in order to enhance production. Capital here might mean the venture capital from where plant and machinery, offices and warehouses could be obtained, just as the working capital. Land, just as other factors of production, is very important in that it is always on the land that the enterprise is situated. In accounting, land appears to be the only asset that seldom depreciates. It, in most cases, appreciates.

(v) Creativeness:-

This serves a dual purpose concerning an entrepreneur. Creativeness is one of the qualities of a good entrepreneur, just as a function of an entrepreneur. The entrepreneur is supposed to be creative enough to add value to an already existing business to make it new, or to create a kind of a new business line which might not have been in existence before. This is quite difficult to come-by. Thus, the entrepreneur creates something new

in the eyes of the consumers so as to entice / encourage them to patronize him. This makes him a good entrepreneur.

(vi) Employer of Labour:-

The entrepreneur is an employer of labour from the labour market. Those who have skills to work in the enterprise are always engaged to put in their labour and are at the end of it paid salaries/wages. Depending, on the enterprise, skilled, semi skilled or unskilled labour is employed to provide services in order to accomplish the desired goal. The employees are remunerated based on the engagement terms.

(vii) Innovativeness:-

As was seen in the case of creativeness, innovation has dual purpose role to play in both the qualities of an entrepreneur, just as it has to do in the functions of an entrepreneur. To others, innovation may seem same as creativeness, but to others it may not. To some, creativeness may entail artistic skills to add value to the existing opportunity to make it new in the eyes of the consumer. Meanwhile innovation may encompass diligence in service, quality of service, ways/methods of attending to customers including some other side attractions made available including promotions and promo-tools that entice consumers. These create or bring about a difference in the instance of the business circle; which in turn makes the enterprise more viable.

(viii) Goal Setting:-

The entrepreneur is the one that sets the goals, targets or the level of achievement to be met within a predetermined period. It might be a monthly target, quarterly, bi-annually or annually. Some targets are hourly, others daily and so on. So, the entrepreneur sets these goals depending on the market situation.

Cases in point, most, if not all goods, have their peak periods. So a good entrepreneur through his production team, sets such goals that during the peak period will produce more goods in order to maximize production and minimize costs and at the same time reduce wastages through unsold stock, some of which might have to be recycled at extra cost to the company.

Target setting or Goal setting is one of the greatest functions which must be done and maintained by the entrepreneur. This is because, without the set goals nothing will be achieved. That is, there might be under production which means that, quantity produced may not be commensurate with the cost of production, or the quantity produced might be more than the demand in the market, thereby causing oversupply which inevitably will be in affirmative with the 4th law of demand and supply which states equivocally that, when the supply is higher than the demand, it forces the price to fall.

At this point, it becomes quite essential for the entrepreneur to set goals which will take proper check on the level of consumption as compared with the entire product or similar goods including his own in order not to make mistakes of supplying more than naturally demanded by the consumers (Gbashama and Akpa 1998 p. 58).

(ix) Business Administrator:-

The entrepreneur's major function is that of business administrator. The reason for this is not far fetched. In the first place, a business administrator is one that has the acumen, versatility, i.e. broad knowledge in applying both human and scientific methods in trying to find a solution to a managerial problem. These scientific methods may be to uncover those hidden impediments that are causing problems in the achievement of the predetermined goals. These might be vide the use of computers, Simulators, Queuing theory, the Games theory, Critical path theory, Mathematical and other statistical gadgets. The entrepreneur who would like to succeed must be at a stage where these have to run round and when results are scientifically provided, he uses it for decision-making. A case in point: an entrepreneur who runs a petroleum filling station, he has six pumping machines with six attendants, still people wait on queue to be refueled. He will now, as the station manager, find out what must have been the cause of the long queues in the filling station. Is it that the filling

stations has no sufficient pumping machines, or are the attendants not active enough or are the pumping machine faulty or what?

Now, the station manager, may at this point use his knowledge of the Queuing theory to determine

- (a) How many people are in a queue?
- (b) How long do the people wait in a queue?
- (c) How long does it take to serve one person in a queue?
- (d) How much does it cost to serve one person at a time on a queue?
- (e) What will it cost the company to add a pumping machine and an attendant to avoid people Queuing – up?
- (f) What will the company gain by adding one pumping machine and an attendant?
- (g) What will the company loose by allowing customers to continue to wait on queue?

These and some other questions are some of the managerial problems that deserve scientific solutions which as an entrepreneur he is expected to provide answers to.

(x) Decision Maker:-

Decision Making, just as Goal Setting, is one the most vital aspects of issues that determine the success of any business. The entrepreneur is the one that takes final

decisions which have bearance on the strategic positioning, the future growth, expansion and otherwise of the enterprise. It will not be surprising to discover that the lower managerial staff who are in the field, producing and selling at their levels have discovered virgin areas and products, but on advising the entrepreneur, he decides to take his own decision which invariably at the end of the day has made the company to lose. This automatically portrays the level of the type of Chief executives that we have here in Nigeria, who would refuse to listen to any advice. It is a pathetic situation, but it requires urgent attention of many chief executives, to better use professionals, and for those who have been using professionals to use their professional advice so as to enhance profitability (*Akpa, (unpublished) 2000, p. 75*).

(xi) Risk Taker:-

This, to other people and scholars seems same as risk bearing, but to some extent, no! (*Akpa, (unpublished) 2000, p.8*). To a large extent, risk taking is more burdensome than risk bearing. Most Nigerian entrepreneurs have taken a risk of mortgaging even their family houses including inheritances whose beneficiaries are more than the immediate family cycle. Some of these businesses have failed. The saddest story out of it all is that such family/extended family houses/properties have been sold, leaving such families/extended families stranded. Terrible!! It does not stop there, some

entrepreneurs apart from mortgaging the existing structures go ahead to mortgage even farm lands, and when these enterprises fail, all and sundry are gone!!! Where will they go from here?

In risk bearing the situation is a little better, because the entrepreneur undertakes his business venture most probably alone. The failure of the venture is his problem. He might have been careless in handling his finance which could have gone a long way in the failure of the venture, or he might have been extravagant in expenditures, thereby making the business to fail.

One may not stop here, (as may be seen later), one of the problems is that they may employ a professional but refuse to make use of the professional advice given by such a professional. A case in point: assuming, as a professional accountant, one has advised an Executive Director of a company, after having studied the accounts of the company, that, the turnover is excellent, and that it is expected that the net profit should also be high, but the result, is a net loss; what a serious problem!! On observation, you as a professional accountant have discovered that the administrative expenses such as phone, hospital, electricity, transport and sundry expenses, including Directors' vehicle running costs have been on a high side.

The accountant now has advised that, there should be an internal control measure to reduce these expenses. This has earned him a sack. What are we really talking about? The entrepreneur believes that he is the owner of the company and what he wants to do in the company no one should control him. But does it really mean that the accountant is controlling the Chief Executive? No! He only wants to exhibit his professionalism by advising that some of these expenditures should be curtailed. This will help ameliorate the problems facing the company.

It is therefore unpalatable for a professional to relief himself of his professional ethics in the satisfaction of the Executive in order to retain his job. This has happened in such a way that most professionals have dumped their professional ethics in order to satisfy their yearnings thereby causing the failure of many companies or investment of their shareholders. It may sound unbelievable, but this is part of the reasons for majority of our banks and other public companies to have gone under. The questions among others that remain are that, will these professionals continue to drop their professional ethics in order to satisfy their selfish desires, and co-operate with the Chief Executives to falsify trading profit and loss results including the statements of Assets and liabilities?

In conclusion, the current entrepreneur and the entrepreneur to be, as they are risk takers, they have a

lot to be desired. This is because, some entrepreneurs would wish to use this dubious means in order to transfer such burden unto others who might have been misinformed by the colossal misrepresentation of the statement of account by a “hand-tight” accountant who foolishly wishes to maintain retainer-ship as the auditor of the dubious company at the expense of his professional calling and ethics (Akpa, *(Unpublished)* 2000 PP.22-26).

(xii) A Trainer:-

The entrepreneur is a trainer in that he employs the unskilled, semi-skilled and the skilled. The unskilled get trained on the job to become semi-skilled, while the semi-skilled get skilled through their training on the job from the skilled. This helps update the technological development of an entrepreneurial set up which, subsequently, translates to the overall development of manpower in the nation. And this does not stop at manpower development alone. Those trained help in producing more goods and services which in turn boost production at reduced costs, hence profit maximization, and increased taxes and Government income and improve national income (i.e. national economy).

(xiii) Dedication:-

The dedication function of an entrepreneur also cuts across the qualities of a good entrepreneur. It will be

unfortunate and devastating if an entrepreneur is not dedicated. One wonders what such an entrepreneur will preach to the subordinates. It now becomes evident that he must be disciplined, dedicated and honest to what he calls his enterprise.

In fact, as we may see ahead, lack of dedication and dishonesty has a devastating effect on the progress of a business concern. Discipline and dedication make an entrepreneur to handle with care the funds of the enterprise, thereby reducing the extravagancy that would have been involved in taking away the funds of the enterprise. In fact, it is important to realize that funds that are meant for the enterprise are not meant for the Chief Executive to spend anyhow. These funds are supposed to be cautiously used for the purpose for which they are to be used. Invariably, some Nigerian entrepreneurs use such opportunities of the funds available for the day-to-day running of the enterprise in buying mansions, cars, marrying more wives, building unnecessary skyscrapers. At the end of the day, these enterprises go under.

(xiv) Hardworking:-

One other function of the entrepreneur that seems same as a quality of the entrepreneur is that of hardworking. It must be noted that if the entrepreneur himself is not

hardworking, one wonders what he expects of his subordinates. He has to be energetic enough to carry out his day-to-day duties and activities of the enterprise. His presence in the premises of the enterprise creates a difference. He should always show good example of hardworking by coming to the office very early and closing later than other workers (including his immediate subordinate) (*Akpa, 2000; p. 108 – unpublished*).

(xv) Focused:-

This function might also seem to be a good quality of an entrepreneur. An entrepreneur must be focused. This entails, he must have had a business opportunity, this business opportunity might make him to have realized the vision he has had. On realization of this vision, he should then be focused. On focusing his attention on this opportunity, he should make it a reality. He must not allow it to pass. It is the duty of the entrepreneur to make sure that the vision he has is realized. This can only be done if he focuses his attention on the vision. E.g. if his vision were to build, operate and transfer (BOT) a dry seaport, then he should forget about trying to build a ship operate the ship, and transfer (BOT) same time when his resources are limited. He may not be in a position to handle the two at a time. It is only left for him to have “an opportunity cost” syndrome. In this case, he may only decide to embark on one out of the two in order to satisfy the immediate desired goal.

With all these in place as some of the functions of an entrepreneur, one expects that Nigerian entrepreneurs would benefit immensely from the cabotage trade as indicated “supra”.

2.1.2b Characteristics or Qualities of an Entrepreneur

There are certain qualities or traits that set entrepreneurs apart from the pack. Some research has been done on what qualities characterize successful entrepreneurs.

Kankha (2002) listed some characteristics prominent in entrepreneurs. These include:

- (1) Hard Work:** - The willingness to work hard distinguishes a successful entrepreneur from unsuccessful one. Most of the successful entrepreneurs work hard endlessly, especially in the beginning and the same becomes their whole life.
- (2) Desire for High Achievement:** - Entrepreneurs have strong desire for high goal achievement in business. This is the motive that enables them to surmount every obstacle on their way.
- (3) Highly Optimistic:** - Successful entrepreneurs are always upbeat about the future and are never disturbed by the present challenges facing them.
- (4) Independence:** - Entrepreneurs do not like to be guided by others and to follow their routine. They like to be independent in the matters of their business.

- (5) **Foresight:** - They have a good foresight to know about future business environment. They visualize in their mind's eye what changes will take place in the market, consumer attitude, technological developments, etc. They also take timely actions accordingly.
- (6) **Good Organizers:** - It is the ability of the entrepreneurs that brings together all resources required for starting up an enterprise and then to produce goods.
- (7) **Innovative:** - Entrepreneurs initiate research and innovative activities to produce goods to satisfy the customers' changing demands for the products (*Kankha, 2002, PP. 3-4*).

Ajagu (2005) added few other qualities of successful entrepreneurs. These are as follows:

- (8) **Initiative:** - Successful entrepreneurs are original, skillful, gifted, resourceful and quick to enhance opportunities. Personal Initiation is a behavioral syndrome resulting in an individual taking active and self-starting approach to work and going beyond what is formally required in a given job. Initiative is the personal ability of starting an action. It involves being able to act without prompting, create and innovate ideas and issues without external influence. To summarize, personal initiative:
 - (a) is consistent with the organization's mission
 - (b) has a long-term focus;
 - (c) is goal-directed and action-oriented;

- (d) is persistent in the face of barriers and setbacks;
- (e) is self-starting and proactive.

(9) Attitude: - Successful entrepreneurs have positive mental attitude. They are warm to people and exhibit good disposition to win friendship.

(10) Leadership: - This is very vital to the success of any entrepreneur. They must inspire people and by so doing earn their loyalty. They assert a lot of influence amongst their workers and business associates.

(11) Decisiveness: - Entrepreneurs respond promptly and accurately in making important decisions. Decision is the alternatives they believe it is better to take a wrong decision rather than not taking any decision.

(12) Responsibility: - A successful entrepreneur accepts full responsibility for the general operation, success or failure of his action or business.

(13) Perseverance: - This is the ability to continuously be focused towards one's goal despite all the odds and failures. Successful entrepreneur do not give up. They have the ability to surmount obstacles, hardship, oppositions and failures and still succeed.

(14) Energy: - Entrepreneurs possess above average energy. They avoid stressors such as work overload, role conflict, role

ambiguity, everyday hassles, perceived control over events occurring in the work environment, and job characteristics.

- (15) Self-discipline:-** Successful entrepreneurs subject themselves to rules and laws in order to achieve their ultimate goal in life. Self-discipline is the ability to positively respond to the demands of life with the confidence of laid-down laws.
- (16) Feedback system: -** Entrepreneurs desire feedback on their success and failures. This is because it enables them re-appraising their performance with a view to re-arranging their priorities. They are conscious of the fact that about 60 percent of delegated assignments are not done as directed and thus, there is a need for feedback, which helps to re-plan and re-strategize.
- (17) Conscientiousness: -** They are conscientious people. They are dependable, responsible, achievement-oriented and persistent.
- (18) Fearlessness and Boldness: -** They see fear as a conquered territory by their level of thought and imagination. They see opportunities and possibilities in spite of numerous obstacles and handicaps.
- (19) Non-Procrastination:-** Successful entrepreneurs take actions as soon as they see an opportunity. They are desirous of innovation and do not waste time at the slightest chance to act.

(20) Self-Confidence:- They have a high level of self-confidence. Self-confidence is being the best. A self-confident entrepreneur is distinct and stands out from the crowd. He guards his reputation and integrity jealously. They are always researching, innovating and improving on their products and services. Confidence enables entrepreneurs to attempt great things and achieve great results (*Ajagu, 2005, PP. 13-25*).

(21) Goal Setting: - Iheonunekwu (2003) stated that the entrepreneur sets high goals. They have a mission, a target and a desire to reach the mark. It is the goal setting strategy that makes the entrepreneur combine those other important entrepreneur qualities, abilities, ideas and ambition to the greatest advantage.

(22) Accountability: - Entrepreneurs are accountable to themselves as their lives depend on the businesses. They keep a careful record of their achievements as a result of which they are able to tell lofty stories of their humble beginnings.

(23) Informal: - The entrepreneur tends to be informal and very versatile in the pursuance of his business; this is to ensure that the jobs are done properly (Iheonunekweu, 2003, p17).

Longenecker et al (1997) discussed the following characteristics of entrepreneurs:

(24) Willingness to take risks: - The risks entrepreneurs take in starting and or operating their own business are varied. By investing their own money, they assume financial risk. If they leave secured jobs, they risk their careers. The stress and time required in starting and running a business may also place their families at risk.

(25) A Need to Seek Refuge: - Although most people go into business to obtain the reward of entrepreneurship, some become entrepreneurs to escape from something or find a refuge, which could be foreign or corporate. The foreign refugee escapes from political or religions or economic constraints of their homeland. The corporate refugee is an individual who flees the bureaucratic environment of big or medium sized businesses by going into business for himself. Other types of refugees include parental refugee, the feminist refugee, the housewife refugee, the society refugee and the educational refugee (Longenecker et al, 1997, PP. 11-12).

According to Olson (1987) cited in Ajagu (2005, P. 11), the major traits of an entrepreneur are: a determined sense of innovation – knowledge what are important and how best to accomplish them; tolerance for unorganized and undefined situation – ability to make a long-term view or goal attainment; good intuitive and analytical ability (Ajagu, 2005, P. 11).

2.1.2c Problems Militating Against Nigerian Entrepreneurial Growth.

These are some of the major problems hampering the growth of the Nigerian Entrepreneur;

(i) Lack of Capital:-

The issue of lack of capital has really hampered the growth of the entrepreneur to the extent that, some who have the managerial skills but do not have the capital with which to go into the business, it has become imperative for them to sit idle. Capital is the back bone of the business of cabotage trade which the law stipulates the building, ownership and manning of the ship by Nigerians. The aim is not to frustrate Nigerians, but to ensure that such business opportunities be left to Nigerians. Unfortunately, the capital is not there for Nigerians to build, own and man the ships themselves, hence the waiver. It is important to realize that cabotage business is a capital intensive business and it takes a long time to recover the investment made there from. This is the problem with the Nigerian entrepreneur who might even have the intention to take up the challenge, but may be estopped.

(ii) Lack of Infrastructure:-

The infrastructure here could be seen in various ways. But invariably these include roads, railways, schools, light, hospitals, water etc. While one is looking at cabotage trade which is more or less a trade along the coastal region, including the inland waterways, one also

looks at the ports to where the consignments have to be transported to. Moreso, the dry port in the inland of the various countries concerned can only be serviced via vehicles through the roads or trains along the railway. These are not here in Nigeria, and where they are, are not functional. The condition of the roads is so bad that in some places, they are death traps. The railway is completely down. When one looks at the electricity supply in the country, it is appalling.

No company completely depends on National Electricity Supply because of its epileptic nature. This contributes to the increased cost of production, hence increased prices of consumer goods and services. Companies like Cadbury and PZ have to rely on their generators in order to produce, and if one considers the cost of running a generator for 18 hours daily, it becomes so huge. No wonder, manufacturers have no choice than to transfer the cost to the consumers. There are few available warehouses to store the goods. Building materials' prices are on the increase everyday. Therefore, it has become more difficult to build warehouses for storage.

The hospitals are ill-equipped and do not have drugs. Some hospitals do not have facilities, there are not enough qualified medical personnel, neither enough accommodation for patients. Schools are other areas where nothing good is coming out of. It is expected that, with the money Nigeria

generated over the years, Nigerians by this moment should not be complaining about all these. But when one takes a survey of our schools, the schools are not stocked with enough books, no qualified, competent and trained teachers to man our schools and take care of our children. The school fees are so high and prohibitive that most of our poor parents can no longer pay the fees. Cost of books and uniforms including some unnecessary levies from the schools makes the situation more difficult and compelling.

The Railway, which is supposed to be the helping hand to the cabotage trade, is non existent in Nigeria. Railway happens to be the next carrier that conveys high tonnage of goods like the ship. Most of the heavy importers, would wish to use railway to convey their consignments because of its nature and the cost effectiveness, including the high tonnage it carries including the fact that the railway goes into the interior of the country than the ship, but it is quite disheartening that the railway has become a dead child yet to be revived.

Moreso, communication should have been made easier than what we have today by allowing land line telephone to be working so as to enhance communication. One discovers that the mobile phones, despite their advantages, are too expensive to maintain and recharge all the times. Furthermore, the charges from the services providers are prohibitive, to an extent that they are not economical in having business discussions with them. That is to say, before one concludes a single business deal on the mobile phone, one

spends a lot, but assuming the landlines were functional only to be complemented by the mobile phones, this would have gone a long way in helping to boost communication.

(iii) Lack of Qualified Managerial Manpower

One of the most perturbing problems confronting the Nigerian entrepreneur is the inadequacy of skilled managerial personnel who will help in handling some of such complicated managerial problems which deserve scientific approaches in solving them. Most of the Nigerian managers now use propounded theories and or try to apply other orthodox methods which were somehow in the past applied by some past managers. Whether or not those theories failed or succeeded at that time, most probably they may not virtually succeed today.

It is therefore imperative to realize that, most Nigerian managers are not conversant with the new scientific methods of applying mathematics, statistics, computer simulations, "Games", theories', Queuing theory in trying to proffer scientific solutions to managerial problems. In fact, some issues involving financial management which would have called for financial managers, in some cases, they are not there and even where they are, the Nigerian entrepreneur finds it difficult (if not increasingly difficult) to employ the services of a qualified managerial personnel who will endeavour to proffer a lasting solution to such a financial problem.

Management consultants are always looked down upon as if they do not have any work doing and that is why they continue to disturb Nigerian entrepreneurs on the need to have skilled workers who will help in decision making and alleviate the problems of one man business with all probable solutions to all the problems in the business, be it financial, administrative, production, marketing and human relationship. The Nigerian entrepreneur, as a one man business, feels it will be a waste of resources and employing a professional will not be necessary.

(iv) Lack of Access to Long-term Loan Facility.

Another tooting problem of the Nigerian entrepreneur is the non accessibility to long-term loans. Most commercial banks in Nigeria and other financial houses do not have the capability of giving long-term loans to the customers. This is because most of them are custodians of short-term funds.

Most savings carried out in Nigeria are short-term savings. It therefore becomes imperatively difficult for the financial houses to advance these funds for long-term businesses as the Cabotage trade, which involves long-term investment demand. That is to say, cabotage trade as the law stipulates, entails building, owning, manning e.t.c the ship by Nigerians, which invariably means spending or investing in a long-term venture. The Nigerian financial houses lack this capacity; hence the Nigerian entrepreneur does not have readily access to funds.

The situation is not far fetched even in a period of looking for her working capital; the condition is not much different. Assuming, if the Nigerian entrepreneur had been able to maneuver issues and came up with funds to finance the cabotage trade, and at the end of it all, does not have working capital which entails short term loan from the finance houses, the entrepreneur finds it difficult to operate. This is either as a result of lack of collateral security or the bottleneck conditions given by the Central Bank of Nigeria that commercial banks should not lend money to the cabotage trade beyond a particular limit. All these things put together have formed complicated blocks for the Nigerian entrepreneurs.

Moreso, the lending rates of the financial institutions in Nigeria are so prohibitive that, even to borrow has become a different ball game. Most entrepreneurs will not be prepared to go into borrowing funds whose interest rate is above 27 percent on short-term loan to finance an investment whose returns take a long period of time. This is because, while the entrepreneur will be battling to recoup the funds in order to pay-off the loan, the interest alone will almost put the loan balance at more than double.

This has created fear in even those entrepreneurs who might have access to the loans by all means. Even the sponsors, that is, the financial houses that would like to sponsor such ventures might be afraid of the time within which to recoup the amount, and at the same time pay-up the interest (*Akpa, 2000, p 240*).

(v) Lack of Proper Awareness of would-be Potential Entrepreneurs in the Cabotage Trade.

Most Nigerian entrepreneurs do not know what cabotage trade is all about, and what the contents of the Cabotage Act are. Those who might be interested in going into the Cabotage business have to be seriously educated with the Laws'/Act's themselves before they start putting themselves into an impossible task they have to face. This is because the Cabotage Act stipulates that, no Nigerian entrepreneur should front himself for and on behalf of a foreign vessel for the purpose of cabotage business in Nigeria.

This invariably means, Nigerians or the Nigerian entrepreneur must build, man, own and operate the ship. And where it becomes necessary to build, man, operate and transfer, this is serious money matter, which the Nigerian entrepreneur will have to take a critical look at and understudy the complexities in order not to fall prey to the whole business. The entrepreneur is to be duly informed that investing in cabotage business entails long term investment. It is not a type of investment that the recovery will come up the same year or the next. This will enable him plan and replan in order to overcome the problems that will be involved.

In fact, the cabotage business, on the onset is meant for those who have been involved in the coastal trade ever before now and those who have had the knowledge of marine businesses, so that by the time they would expand to cover

ownership of ships, the routes, conditions, peak periods etc might not be something too new to them to do. Already, they must have acquainted themselves with some of these trends which to a new comer in the business might look so tedious and cumbersome.

(vi) Lack of Technological know-how

One of such technological know-how is to build the ships. Here in Nigeria the shipyard which initially was procured by the government, the “Niger Dock Yard” has been sold off. The training which those who worked there initially might have had, can not build a modern and transcontinental ship for cabotage business. Apart from lack of man power and technology to build the ships, there is the issue of the personnel who have the capacity to man the ships.

How many Seafarers do we have in Nigeria? How many captains do we have in Nigeria? How many of them will be willing to put in their best in order to overcome the problem of cabotage in Nigeria? Paper documentation and other processes in order to start off the cabotage business is a new assignment all together that has to be solved in order to get enough personnel to carryout this potential assignment. More judges have to be trained in this field of cabotage in order to handle the cases emanating from the business of cabotage.

All these are not issues to be resolved in a day. It means a lot have to be put together in order to see that the cabotage business has come to stay in Nigeria. Moreso, the engineers

to be used as seafarers and others must not be left out in the training and retraining of the workforce that will be involved in the cabotage business. And if cabotage business is to succeed in Nigeria, the dry port including the railway and the roads must be properly maintained in order to accomplish the desired goal.

**(vii) Government Patronage and Sponsorship/
Establishment of a Cabotage Bank.**

The issue of government patronage of the cabotage business is not to take part directly in the affairs of the running of the business. It is aimed at the government to establish a bank that will be specifically in charge of the loans granted to the entrepreneurs who would be participants in the cabotage business. How the loans will be disbursed, utilized and paid back to the said bank should be part of the responsibility of the bank officials. This will go a long way in encouraging the would-be or potential entrepreneurs who will now be the ones operating in the cabotage business.

Shipping is generally believed to be a shrewd business riddled with sharp practices where only the strong survive. This, perhaps, explains why only very few Nigerians are active players in the shipping sector. Besides, ship acquisition is capital intensive and requires hardwork for the business to thrive. There is consensus that remaining afloat in shipping through sound management could be a more assiduous task than acquiring a vessel and that probably explains why many

budding shipping lines go aground a few years after launching their vessels.

It is therefore not surprising to realize that only 11 Nigerians are key players in the ships owning business, and experts blame finance, poor management skills and government policies. The list of 11 registered members of the indigenous Ship Owners Association of Nigeria (ISOAN), a group of indigenous ship owning organizations, managing Nigerian – registered vessels of no less than 500 cumulative dead weight tonnages, who own a total of 37 vessels, showed that their ownership ranged between one and five vessels, which are often times under – deployed (*The Punch Newspaper Feb. 13, 2006*).

The list of the registered indigenous ship owners include among others;

- i) Morlap Shipping Company Limited
- ii) Genesis International Worldwide Shipping, which has four vessels each in their fleet.
- iii) Al-Dawood Shipping Lines and
- iv) Daped Nigeria Limited, which operates five and one tanker vessels each as well as Ship and Shore Services Agency (five vessels)
- v) Sea Force Shipping Limited (Zenon) which owns four vessels.
- vi) Tukuma Maritime Limited (OBAT) that owns tanker
- vii) Pokat Nigeria Limited (Two vessels).
- viii) Helko Marines Services Ltd (One vessel)

- ix) Sea Services Agency and
- x) West Coast Shipping Line with five vessels each in their fleets.

The Chairman and Chief Executive Officer, Walsen Ltd, a marine consultancy services and brokerage firm that assists prospective ship buyers, Captain Adewale Ishola, opined that having money is just one of the pre-requisites for buying a vessel and noted that an individual does not need all the money required to buy a ship. "People can pool resources; they can form associations, alliances and mergers to buy ships". He advised and added that, usually, everybody must know the value of his input, which would translate into shares and ultimately dividends as the business grows. He said that many shipping businesses die due to poor feasibility study, and sound management is crucial to remain afloat. That subsisting contract ensures survival and growth. And that now the Nigerian Marine sector is growing, shipping acquisition can be achieved by pooling together resources, thereby employing experts and qualified professionals to man the vessels. This one can start by chartering a vessel with input to buy later (*The Punch Newspaper Feb. 13, 2006 p19*).

(viii) Lack of Proper Training and Retraining of Nigerian Entrepreneurs

Most potential and prospective entrepreneurs who intend to join the cabotage business do not have the basic knowledge

of what the business is all about. Some who have but little knowledge about same do still require more training to enable them acquaint them with the Cabotage Act and how the cabotage business works. In fact, it is important to realize that it will be of paramount importance for the entrepreneur to understand the nature of the business she/he intends to go in for before doing so.

In a situation where the entrepreneur does not have or has little knowledge of the cabotage business it does not make good for patronage. He may end up having hypertension over trivial issues which if he had the previous knowledge he would not bother himself much. This therefore calls for the training and retraining of the entrepreneurs or his agents or representatives who will be in a position to handle the affairs of the organization without many problems.

Some of the specialized areas include ship management and ship logistics crewing with commensurate salary and necessary qualification and experience in line with the Standard Training Certificate for Watch Keeping '95, classification of the vessel and proper insurance for the vessel, especially enlisting under the protection and indemnity club cover. And above all, the ability to sustain and keep the vessel afloat at all times by keeping it in good shape and preventing pollution to the marine environment.

Although the ship owner does not necessary have to manage his ship, but should have some of these basic knowledge so

as to enhance productivity, by employing the best manpower to man the ships. Not the type who has no prior knowledge of anything who would wish to employ half baked personnel to man the ship as against the laws.

(ix) Lack of Research for Development

It is important to realize that most Nigerian entrepreneurs do not know the importance of research in development. Despite the fact that government has made it compulsory for companies to allocate part of their profits to research and development, they find it difficult to do same. Areas where some of these entrepreneurs would combine their efforts i.e contribute funds themselves and conduct a research to improve their production capabilities they look at it as a waste of funds.

Even after some higher institutions in the country have conducted some researches, have come out with results which the Nigerian entrepreneurs are asked to pay only a token and collect these researches to be implemented in their various organizations for improved output, has met them with stiff resistance. It is actually disheartening, perturbing and disturbing, but one would not actually blame them because they do not actually know the value of the researches.

Some of them, who pay for such researches, do so because they feel the government has only compelled them to do so, but not that the results obtained are of importance to their organizations. No wonder when it becomes necessary for a

Nigerian entrepreneur to send a staff for training, they always frown at this. This is simply because they do not actually know the value of training to their workers. Despite the fact, such trainings make the output from such a person so trained to improve. All the same, it is hoped that the current breed of entrepreneurs that we have in the making now, who are educated, one believes that they will value Research and Training for development and improved productivity.

(x) Political Instability of the Nation

Most Nigerian entrepreneurs both at home and in diaspora find it increasingly difficult to invest in Nigeria now because of the instability in the nation's political climate. One is not so sure of what one will see as day breaks. People are very much afraid to invest in an economy whose policies change every minute.

A case in point: as the present administration is emphasizing the cabotage business, another government may takeover and cancel all that concerns cabotage and start facing another area of business. But assuming there is always continuity in government policies, the cabotage business is a long-term investment, even if another person takes over the government, he might still encourage the stakeholders. This could have been a solution to the problem of instability in the polity. In this case, one will assume that the investment will not go under, even if another person takes over the government.

2.1.2d. WAYS TO COMBAT THE PROBLEMS OF NIGERIAN ENTREPRENEURS.

The Nigerian Entrepreneurs are saddled with so many problems which hinder their growth. Some of these problems have their solutions not far fetched. These are:

- (i) The Infrastructure:** The Nigerian government should put in more efforts in the provision of the require infrastructures in order to enhance the participation of the entrepreneurs in the cabotage business. This is very important because, cabotage business may seem to be coastwise trade, but this does not stop there.

The consignments have to be transported into the hinterland, and for this to be possible, the inland waterways have to be dredged, or the roads have to be in good shape and or the railway lines have to be functional to enable the goods to be transported to the consignee. Moreso, if the dry ports have to be used, then the ports have to be constructed and the dredged inland water ways have to be made in such a way that they connect the dry-ports.

These dry-ports also should have warehouses, good road network around it with constant power supply and should also have telephone lines connected to it. These will enhance the movement of the goods to the heavy importers who have been nursing such idea of running away from the seaports because of their constant over crowdedness, congestions and overcharging. In fact, this

will make possible for the consignment to be delivered to the consignee very close to his company's premises, thereby reducing the risk and transportation cost hence the reduced production cost and maximization of profits.

- (ii) **Capital:** The Issue of capital has been one that has transversed so much in the Nigerian entrepreneur. This has been the reason why the researcher is of the view that the government should establish a cabotage bank or encourage now mega banks or bank of industry (BOT) to be able to lend money to the prospective entrepreneur who would like to participate in the cabotage business. These financial houses, after having studied the proposals, applications and feasibility studies or business plans of the prospective applicants, should be able to find out whoever is qualified and competent to do the business of cabotage and lend such monies to him/her to encourage such entrepreneur to carry on the business. This is will go a long way in providing the required initial venture capital to the entrepreneur. As for working capital, the Central Bank of Nigeria (CBN) should devise a means of scheduling part of the proceeds of the commercial banks through the Small and Medium Industries Equity Investment Scheme (SMIEIS) to be channeled to cabotage business for working capital which in this case can be recouped in the shortest possible time.

Just as has been explained by the Chairperson/Chief Executive Officer, Walsen Ltd, a marine consultancy services and brokerage firm that assists prospective ship buyers, Captain Adewale Ishola, who postulates that, having money is just one of the prerequisites for buying a vessel. He also noted that an individual does not need all the money required to buy a ship. He was of the opinion that, “people can pool resources; they can form alliances and mergers to buy ships.” He added that usually everybody must know the value of his input, which would translate into shares and ultimately dividends as the business grows.

According to Ishola, the first step is to carry out a feasibility study in terms of the level of finance to be involved, the character of the trade that the ship would be developed, the type of ship required and the tonnage or storage capacity. He reiterated that ship acquisition is better achieved when backed with a subsisting contract. According to him, “It becomes riskier if you do not have a contract and you buy a ship compared with somebody who owns a contract. The former will now be at the whims and caprices of the market forces.” He added that the enabling environment in terms of government policy must also be complementary. Ishola warned that, “it is advisable that you have a subsisting contract that can even pay up the value of the vessel so that you are not losing anything.

(iii) Access to Long Term Loan: As to access to long-term loan to enable the entrepreneur to acquire, man and operate the ship, apart from acquiring loans which are short term and which can not guarantee the commercial bank loans, it is imperative to have another way of acquiring the ship. The government should do her best to tackle the problem. Still on securing her funds for ship acquisition, Ishola suggested a gradual approach by owning a ship first, which if well managed would develop into a fleet of many ships. “You need to just own one. It is like building a filling station. Once you have one and you manage it well, you are likely to build more. A ship well managed will have a multipliers effect.” According to him, the prospective owner can also explore ship chartering once a contract has been secured with the option of buying that ship if it performs up to the optimal level. He said many people had in the past used this option to own ships.

He further remarked that the now scrapped Ship Acquisition and Ship Building Fund managed by the National Maritime Authority (NMA), which is being replaced with the cabotage vessel financing fund, had been explored for optimal use by some ship owners who are doing well and increasing the size of their fleet. He, at this juncture, cited the Managing Director, Genesis Worldwide Shipping, Captain Emmanuel Iheanacho, as a success story, even though the vessel he started with

has been scrapped, saying he now has about five vessels.

According to him, prospective ship owners can also access bank loans, which would be more readily available now that Nigerian banks have been capitalized to a minimum of N25 billion. He said that generally if one has the financial muscle and support backed with the expertise around him, he can buy and run a vessel and become a successful ship owner firm” (*The Punch Newspaper; Feb. 13, 2006 p.19*).

2.2 OPPORTUNITIES FOR NIGERIA ENTREPRENEURS FROM CABOTAGE BUSINESS.

The viability of any industry is determined by the level of need, demand and market for the services it provides. The demand and availability of market create the opportunities. The maritime industry can boast of these and more. There is a huge market for prospective investors in the maritime industry which if fully exploited, has the ability to surpass current earnings in the oil industry.

Being a “shipper” nation interested in developing its coastal and inland waterways trade and its maritime industry (for the benefit of its nationals) and in having enough vessel to carry the cargo in its domestic routes, Nigeria needs to embark on proper and well implemented cabotage services that can be used to provide and increase the cargo support given to

indigenous shipowners and operators. Nigeria would also need to attract new investors into the acquisition of coastal ships, thereby increasing the national tonnage. Lending and financial institutions should be interested in financing the acquisition of vessels to be procured by indigenous ship operators which ultimately will lead to the expansion of the national fleet.

Cargo is attracted by the presence of efficient, time and cost-saving services such as repackaging, assembling, manufacturing, and financial and port services. The availability of cargo and passengers to sustain their business makes domestic shipping company/companies attractive for credit facilities that could be used for fleet and business. Insurance companies will need to insure cargo, vessels, and seafarers. Banks will be needed to finance the building and acquisition of coastal vessels, while the Nigerian shipyards and dry-docks will have greater patronage in building and repair of ships.

The construction industry would also benefit from the construction, expansion and repair of ports and dredging of the inland waterways, just as those in information technology systems for safe coastal navigation. Freight forwarders, shipping agencies, shipping consultants and those supplying services needed in the coastal and inland shipping business will benefit from a regulated cabotage legal regime in Nigeria. This multiplier effect of maritime cabotage will induce professionalism, exposure to technicalities of shipping, improved indigenous maritime expertise and competence, and increased economic activities in the maritime industry.

Having looked at the whole spectrum of the shipping market- containers product carriers – VLCC'S, RORO, passenger crafts, support services for the oil and gas sector, and having taken careful view of the present situation and assessed the internal environment, the reality on the ground is:-

- Nigeria is a major crude oil producer.
- The event of September 11, 2001 is a temporary hiccup.
- The US will come out of the recession stronger and more respected
- China's entry into the WTO will fuel their industrial power base, now known as the "workhorse" of the world economy.
- Low oil prices or not, Senegal, Ghana, Durban, India, UK, and the USA will continue to import oil from Nigeria. Oil demand is relatively inelastic.
- With professional approach and market driven sense of business urgency, the oil majors will be interested in accommodating local companies where they exist. The pressure from the national assembly, the industry, NMA and the share force of members under a democratic system will encourage the opening up of the NNPC to allow indigenous participation in:
- Crude shipment to African countries, India and China.
- Production shipment along Nigerian Coastal waters.

- Logistics and vessels support to the greater Niger Delta Coastal waters up to Angola, Cabinda, Lobido etc.
- On the container business, a prudent niche operator may still have a chance for the UK/continental route. Mega carriers may not fully commit resources given the uncertainties of port reforms, Cabotage etc. A wise investor who knows the trade well would capitalize on his local market knowledge and do good business. Caveat-he should not rely on home based cargo only. His partnership with quality operators must exploit new and the expanding markets of South Africa, China etc. *(Asoluka, 2003. P.23).*

Trade is the engine of development of any nation. A nation's balance of trade affects her gross domestic product and the expansion of basic man power and technological development. Trading in today's economy is mostly carried out on waters, and ships are the connecting vehicles. No form of transport equals the ship in the enormous quality and volume of goods traded between nations. Shipping remains the impetus by which a vigorous export promotion policy can be mounted and sustained. But there is not enough ships to carrying the world's goods and sustain commerce.

Statistics from Lloyd Register of Shipping shows that since 1975 there has been a continuous rise in the world surplus tonnage due to shortage of merchant ships. Between 1975 and 1985, the world surplus tonnage increased from 86.0Million deadweight reaching a peak of 195.8million

deadweight in 1983 before declining to 161.8million deadweight in 1985.

In relative terms, the share of surplus tonnage in total world merchant fleet increased from 8.4% in 1975 to a peak of 28.5% in 1983. Although, there is no current comprehensive data showing the percentage tonnage surplus as at today, it is believed the tonnage would have risen to about 40%. And the main reason why this figure continues to rise is decline in the volume of ship acquisition and ship building. It was gathered from the same source that the volume of active merchant fleet in the world was at its peak in 1978, when it recorded a volume of 632.7 The volume dropped in 1979 to 587.7 and by 1985, it had dropped to a volume of 503.0 (*Omsa, 2005. P.16*)

It is doubtful if Nigeria's merchant fleet accounted for 3% of the world merchant fleet. As a matter of fact, it was not until the 3rd National Development Plan (1975-1980) that the Nigeria National Shipping Line limited (NNSL) placed order for 19 multipurpose general cargo vessels at a total cost of N200m. The vessels which were financed exclusively from our petro-naria revenues were built in Yugoslavia and Korea. No other shipping company in the country apart from African Ocean Line Limited placed orders for and took delivery of any vessel from any shipyard in the world until 1987. Today the story of NNSL is known to all. Neither company nor vessels are traceable. The NNSL palaver depleted Nigeria's available and active merchant fleets.

It is evident that ship acquisition and ship building are big businesses. Our financial experts may readily confirm that they do not have the financial strength for such gigantic projects. The Obasanjo administration has set-up a machinery to take care of this situation and the would-be potential entrepreneurs who wish to dive into the cabotage business have been given an impetus on how to go about it. In the near future, this problem of finance will be overcome. It is also good to quickly draw attention to the current auction of the GSM license for mobile phones in the communications industry. At this time of the auction, the bids had risen to US\$285.m. From where were the funds coming?

The world is moving towards privatization, concessions and competitions. A lot depends on the policy thrust of the Federal Government. The ports both dry and seaports have been given out through what is called concessioning. It is hoped that this will go a long way in trying to modify and revamp the already dying maritime industry in Nigeria. The ultimate objective is the emergence of Nigeria as a regional hub for a whole range of shipping services including ship construction, repairs and dry-docking.

Nigerians are highly mobile, with all the energy and drive at the disposal of her citizenry. This is hardly surprising. But very little opportunity is taken of this. Any ship building company in Nigeria can rake in fabulous profits, if it dares to explore the potentials available in passenger and commuter ferries, leisure crafts, cruising yachts, offshore support vessels, fishing vessels, barges and lighters, to meet Nigeria's inland

and coastal trade and transportation needs. It is cheaper to build these smaller vessels than the sea going vessels.

There are also diverse opportunities to be explored in inter-coastal passenger and cargo liner services within the west and central African sub-region by the entrepreneurs. It is estimated that Nigeria generates about 70 percent of the total volume of cargo traffic in the west and central Africa regions which should be carried by Nigeria shipping companies. The reactivation of the solid mineral sector will also provide alternative export cargoes apart from oil and gas.

2.3 FORM OF CARGO SUPPORT PROGRAMMES.

Cargo support programmes may be in the form of reservation of carriage or preferential allocation of cargo (public sector or government owned or controlled) to shipping companies. Alternatively, it may involve the sharing of all cargoes generated within a country amongst its indigenous shipping companies so that they can remain in business and increase the national tonnage by acquiring more vessels since they will acquire more vessels when they are sure of availability of cargo to be carried with their new and increased tonnage through cargo preference, or reservation or sharing/allocation (*M.I.Igbokwe, as in Asoluka 2003; p.79*)

2.4 RATIONALE FOR CARGO SUPPORT PROGRAMMES.

Cargo support programmes are usually put in place by governments interested in developing and sustaining the growth of their merchant fleet so that inter alia. Such merchant fleets would be able to support its naval fleet in the times of war, or national emergency and to take part sufficiently in the lifting of foreign and domestic commerce as in the case of the US Cargo preference Act of 1904 by which only US vessels can be used to ship supplies by sea for the US Armed Force. Merchant Marine Act 1936 (Pl.835) as amended by Cargo Preference Act of 1954 (Pl. 664) requires that at least 50 percent of any government controlled cargo can be shipped by sea on privately owned US vessels. The Merchant Marine Act of 1936 as amended in 1985 requiring 75 percent of certain food aid is shipped by privately owned US vessels. It is also undertaken in order to withstand competition from the highly subsidized foreign ship owners in international seaborne trade and coastal shipping trade or increase their tonnage (*M.I. Igbokwe as in Asoluka 2003 p.78*).

The US Maritime Administration oversees the administration of, and compliance with, the US cargo preference laws and regulations by federal agencies as they relate to individual programmes, which generates ocean-borne cargoes. Among the programmes are, the humanitarian aid shipment provided by the US Department of Agriculture and US Agency for International Development, commodities financed by the Export-import Bank (Eximbank), Foreign Military Sales and Department of Defence Cargo Shipped by commercial ocean

going vessels (*Cf. MARAD 1999, p59*) (*as in Asoluka 2003 p. 78*).

Another rationale for cargo support programme is to give an incentive to indigenous ship owners to keep their vessels registered in the Registry of its country, thereby giving its nationals the opportunity to be employed onboard the vessels that would have got registered in another country. For instance, the US Cargo Preference Act provides that some government owned or government financed cargo shipped internationally should be carried by US vessels. But while the laws caused a decline in the percentage of ocean-going cargo carried by US vessels, which have given incentives to many vessels which would otherwise have left US Registry for other registry to remain there and had been offering shipboard jobs to thousand of US citizens (*Cf. Report titled: Maritime Industry: Cargo Preference Laws- Estimated Cost and Effects at <http://ntt.gov/ntc/docs/rc9543.html> as in Asoluka; 2003. p.79*).

Nigeria also has in her laws some form of cargo support programme which provided for the sharing of all cargoes among, and the reservation of public sector cargoes for carriage by its designated “national carriers” (*Cf. section 9,5(i). 14 and 18 of the National shipping policy Act Cap 279 Laws of the Federation of Nigeria*) although the Act seems to give the impression that cargo sharing and cargo reservation are for the benefit of only Nigerian shipping companies engaged in international deep-sea shipping and not applicable to cargo and Nigerian shipping companies on the Nigerian

coastal or inland waterways which are routes that cabotage is concerned with. The cargo sharing/allocation policy enshrined in the Cap 279 was suspended in 1999. There are strong views by the stakeholders that it should be revisited, restored and effectively applied and monitored to eliminate fraudulent and sharp corrupt practices that were associated with its previous application and which led to its suspension (*Asoluka 2003, P.79*).

2.4.1 Impact of Cargo Support on Domestic Waterborne Transportation

Being a “shipping” nation interested in developing its coastal and inland waterways trade and its maritime industry (for the benefit of its nationals) and in having enough vessels to carry the cargo in its domestic routes, Nigeria needs to embark on proper and well implemented cabotage services that can be used to provide and increase the cargo support given to indigenous shipowners and operators. Nigeria would also need to attract new investors into the acquisition of coastal ships, thereby increasing the national tonnage. Lending and financial institutions should be interested in financing the acquisition of vessels to be procured by indigenous ship-operators, which ultimately will lead to the expansion of the national fleet.

Cargo is attracted by the presence of efficient, time and cost saving services such as repackaging, assembling, manufacturing, and financial and port services. The availability of cargo passengers to sustain their business makes domestic

shipping companies attractive for credit facilities that could be used for fleet and business expansion. These could also attract more investors into the domestic shipping business. Insurance companies will need to insure cargo, vessels and seafarers. Banks will be needed to finance the building and acquisition of coastal vessels while the Nigeria shipyards and dry-docks will have greater patronage in building and repair of ships.

The construction industry would also benefit from the construction, expansion and repairs of ports and dredging of the inland waterways just as those in information technology systems will have to supply and maintain the marine radio communications and radar system for safe coastal navigation. Freight forwarders, shipping agencies, shipping consultant and those supplying services needed in the coastal and inland shipping business will benefit from a regulated cabotage legal regime in Nigeria. This implied multiplier effect of maritime cabotage will induce maritime competency and increased economic activities in maritime industry.

2.4.2 Uses of Cabotage Policy in Enhancing Cargo Support for Indigenous Carriers.

2.4.2i Exclusion of foreign carriers from domestic shipping:-

Since by virtue of laws, foreigners and their vessels will be barred from coastal trading, shipping in Nigeria or at least be limited to only the area where Nigerians do not have the needed special vessels to operate. It means that cargo especially, petroleum oil (both crude and refined), the carriage of which is being dominated or controlled

by foreigners and foreign vessels, will be reserved and available for lifting by Nigerian built or Nigerian owned vessels only. This will keep them going in business; for as long as there are sufficient cargo to be carried would be undertaken by Nigerian investors thereby promoting indigenous participation in waterborne cargo business and increasing the national fleet.

This is the major connection between the use of cabotage as a tool for the enhancement of cargo services (as part of the cargo support programme) and indigenous maritime capacity enhancement as part of indigenous vessels expansion and acquisition programme, leading to the expansion of national tonnage. The starting point in cabotage services as a means of cargo support is therefore to reserve the lucrative carriage of crude oil and refined petroleum products and gas, the volume of which is very high, an addition to other cargoes from port to port in Nigeria to only Nigerian-owned or Nigerian built vessels.

It is also noteworthy that the cargo which will be propped up for carriage by indigenous ship owners and shipping companies through the application of the cabotage principle will be in addition to the cargo meant for carriage by indigenous shipowners and companies on international sea routes. Cabotage is thus a means of cargo reservation for indigenous shipping companies under a cargo support programme.

2.4.2ii *Extension of Area Covered by Cabotage Policy from Territorial Sea to the Exclusive Economic Zone:-* Another way of using cabotage for enhancing cargo support is by extending the sea within which the cabotage law would be applicable from the limits of

the Nigerian territorial waters which is 12 nautical miles from the baseline (Cf. the Nigerian Territorial Water Amendment Decree of 1998) to a point or place on the high seas within the Exclusive Economic Zone, which is 200 nautical miles from the baselines (Cf. *"The Exclusive Economic Zone Act 1978"*) and the continental shelf. This will bring about the reservation of all economic activities including fishing and cruising within the exclusive economic zone to Nigerians. In order to fight the presence of numerous foreign fishing fleets along the Pacific coast of Japanese offshore grounds, the Japanese Government extended its territorial waters from three to twelve nautical miles and in 1977 set up a 200-mile fishery zone around its coast which it reserved for its national except the Koreans and Chinese (Cf. *"formulation of Japans ocean policy"* by Hideo Takabayashi, Emeritus professor of Kyushu's University (1994) p.5) (as in M.I Igbokwe in Asoluka 2003, p,81).

The problem of technical know-how or the special vessels needed by Nigerians to provide the shipping services required in such activities in the area would be overcome by the granting of temporary license to foreign ship owners or to Nigerians to charter the right foreign vessels; to provide the shipping services required, thus, the carriage of off-shore installations, platforms, passengers and the needed transportation in offshore oil and gas operations up-to the continental shelf and within 200 nautical miles from the baselines and perhaps carriage of all seabed mineral resources on the continental shelf, will be reserved for indigenous maritime vessels and thus enhance indigenous maritime capacity

(iii) Extension of Cabotage Law to Non-transportation OffShore

Commercial Activities: - The off-shore oil and gas industry in Nigeria, like elsewhere, is a major marine activity using mobile drilling rigs, production platforms and facilities, supply vessels, tugs and other support vessels, seismic vessels and various barges, for pipe laying, launching and structure. However, other vessels involved in non-transportation activities in the off-shore oil industry such as drilling rigs, seismic vessels anchor handling vessels, cranes, barges and production platforms may not be subject to cabotage if they do not engage in carriage of goods and passengers from point to point on the coasts. Thus, by both the zonal approach of adding carriage routes or points of origin and destination not previously included under cabotage and functional approach of including other non-transportation commercial activities under cabotage by reserving them for Nigerian shipping companies, the cargo support programme would be enhanced and beneficially implemented in favour of Nigerian shipping companies.

2.4.2ai External Threats to Usage of Cabotage for Cargo Support and Indigenous Vessels Expansion and Acquisition Programmes:-

- i. **Regional Cabotage:** Members of the Organization of African Unity (now African Union (AU)) had on 2nd June, 1991 in Abuja signed the treaty setting up the African Economic Community and with Nigeria's ratification on 26th May, 2000 of the Consultative Act of African Union, the African Union came into being on 26ht May, 2001.

Establishment of regional cabotage or short sea shipping, probably under the auspices of ECOWAS in view of the present effort at economic integration and collaboration in West Africa and Africa or its encouragement by the Federal Government because of its being seen as an important development strategy, adversely affect the cargo support programme and the quantum of cargo available for carriage by Nigerian shipping companies and ship owners.

Regional cabotage for West Africa is now possible because of the enabling signals and signs including those received at the mini-summit of ECOWAS Head of state and Government held in March, 2000 in Abuja, Nigeria.

Since ECOWAS has set up other workable (though not without its problems and costs) cooperative and integrative peace monitoring machinery for peace keeping and peace enforcement in West Africa called the ECOMOG, a Common Currency Unit through WACU (West African Common Currency), law-making and dispute adjudication through ECOWAS parliament and ECOWAS Court of Justice, Cooperation on Port State Control in West and Central African Region vide the Memorandum of Understanding on it signed in Abuja in October, 1999, apart from other private-sector driven collaborative actions on air transport (ECO-AIR) a regional airline which has started recruiting staff and maritime transport (ECOMARINE), a regional coastal shipping line in the process of development, banking (ECOBANK of NIGERIA PLC) created by chambers of commerce in West Africa, the ability of ECOWAS to facilitate the development and growth of or establish the machinery for organizing and implementing a regional cabotage in West Africa,

in the nearest future, using its Specialized Commission on Transport, Communications and Energy should not be underrated.

At the mini-summit, ECOWAS adopted a programme of action in respect of maritime transport requiring member states to designate specialized port terminals for dedicated coastal shipping services harmonizes and update their shipping laws aimed at promoting the liberalization of maritime services between countries, and that maritime agencies of the member states should form themselves into a committee which should meet within three months thereof to examine the studies and other issues relating to the establishment of the coastal shipping line (*Cf. Articles 13 of the Final Communiqué dated 27th March 2000 of the ECOWAS Mini-Summit Heads of State and Government on the creation of a borderless ECOWAS held in Abuja at the invitation of Nigerian President, Chief Olusegun Obasanjo within the context of accelerating the regional integration process in West African (Asoluka; 2003. p.83).*

2.4.2a) Hasten West African Regional, Economic and Political Integration and Cooperation:-

The other argument often put forward in support of regional cabotage is that it will hasten West African regional, economic and political integration and cooperation and at the same time facilitate the establishment of the Pan-Africanist African Union in 2001. Regional integration (statewide cooperation) would lead to the dismantling of borders and lead to larger, more homogenous and integrated markets, improved commercial terms and opportunity for further development, market expansion and political cohesion in the region. The expansion of a regional economy under a free trade it

has been argued, trends to reduce the complexity of trade patterns thus, helping to proceed to the next step of a larger regional market of a world-wide integrated transport market. This, it is believed, will generate trade between state and regions that are isolated today due to different regulatory and logistic approaches and this is in line with current trends of collaboration and partnerships in maritime trade among maritime nations. It is, however, not certain whether these decisions have been or are being implemented and whether the countries' maritime agencies met within three months of the final communiqué. But should ECOWAS or its members implement the decision or develop a regulatory framework for regional cabotage as an influential member of the ECOWAS will run counter to the Nigerian cabotage as a tool for cargo support and indigenous fleet acquisition and expansion. Domestic interests cannot, in regional cabotage, interrupt or interfere with or restrict through discriminatory measures, access of other West African state-owned or operated vessel and crews to shipping markets of other West African states, including Nigeria.

Regional cabotage is also said to be capable of inducing innovations and investments in regional shipping services and growth and that if West African States cannot and are yet to afford a high fleet/tonnage in sea going vessels to control shipping trade between West Africa and the rest of the world notwithstanding the UNCTAD 40:40:20 principle. At least, they can pride themselves in starting deep sea shipping from the experience gained from the development and growth of an ECOWAS cabotage ("ECO-CABOTAGE") fleet which they can use for the control of waterborne commerce on the West African coasts and inland waterways,

thereby becoming a regional maritime economic power in the African Continent.

2.4.2b Bilateral and multilateral agreement:-

There may also be protocol by ECOWAS to which Nigeria is a signatory allowing free and unrestricted movement of goods services and vessels within member state territories including their coastal waters. A case in point is that of the Maritime Organization of West and Central African (MOWCA). Following two World Bank/MOWCA round tables on efficiency of shipping services held in Cotonou in 1992 and 1997, MOWCA adopted a resolution approving proposal on liberalization and competitiveness of the sub-region's maritime transport services and adopted programme to implement those policies including the encouragement of West Africa's private sector participation in ship operation, particularly in coastal shipping by way of ownership/ chartering of tonnage and forging cooperation/partnerships between regional operators and foreign shipping companies operation in the sub-region in accordance with the African maritime charter and African Economic Community (Cf. *"MOWCA: 26 year of Bridge Building" in the maritime Quarterly of June 2001, P.7*).

Therefore, if there are in existence such bilateral or multilateral agreements or treaties between Nigeria and other countries in or outside West and Central Africa on joint exploitation of marine resources that permit other nation's vessels and citizens to carry out business (including fishing) within Nigerian coastal water (since municipal law which cabotage law is, cannot override international

law or conventions and there could arise conflict when such treaties are domesticated as municipal (laws in Nigeria), cabotage policy would be made unworkable because Nigeria can only reserve its coastal trade for its own vessels, crewed by its nationals to the exclusion of foreign vessels if there is no treaty which it had signed to the contrary. If there exist such treaties, unless Nigeria renounce or withdraws from them, the Nigerian cabotage law could be in conflict with her obligation to honour its international agreement

2.4.2c World Trade Organization (WTO):-

As at 1998, the World Trade Organization (WTO) had 132 members including Nigeria, 98 of which are developing countries, 27 of which are categorized as least developed countries (LDCS) with another 31 in the process of accession. WTO is the organization set up out of Uruguay Round of General Agreement on Tariff and Trade negotiation in 1995 and which, as the successor to the General Agreement on Tariffs and Trade (GATT), was to inter alia regulate trade and tariffs worldwide and settle trade disputes among members. There was a framework which provided annexes of the more important areas such as the General Agreement on Trade in Services (GATS) and the Agreement on Trade Related Intellectual Property Rights (TRIP) which were a part of the text.

GATS has two parts, the short framework agreement which is substantially similar to the GATT and the schedules of national commitments which members have undertaken and which form a part of the Agreement in the same way that tariffs are part of the GATT. However, in GATS, governments freely choose which services to include in their schedules and, in the committed sectors

they are free to maintain limitations on the degree of market access and national treatment they are prepared to guarantee. Therefore, negotiation for further liberalization will involve negotiators pressing their partners to include more sectors in their schedules and to remove some of the limitations they still maintain.

The Agreement provides for every means by which services can be traded and supplied and is not limited to cross-border trade as with GATT, but also consumption abroad, which means the freedom of shippers to use foreign transport providers, the right set up any type of business to supply the services in the export market (establishment trade), and the temporary movement abroad of individuals to provide a service, all of which show that GATS is also concerned with foreign direct investment (*Cf. Paper presented by David Harbridge, Director WTO at the XXVIIth IRU World Congress & Exhibition, titled "Mobility of People and Goods 2001 New Round of Negotiation", 2003, pp.86-87*).

There were also several annexes prescribing treaty rights and duties of contracting parties. Dispute resolution mechanisms were established, generally and specifically, for key areas like GATS and TRIP. The Dispute mechanism is such that decisions are reached by "consensus", that is, where no member present at a meeting where the decision is to be taken raises an objection to the proposed decision, no vote of contracting members is taken. If mediation, consultation or conciliation do not resolve a dispute, a complaint panel of trade experts to report to the contracting parties will be raised to look into the matters.

In this regard, it will be necessary to look into any commitments which Nigeria may have made during the negotiations regarding market access for maritime services before they were suspended in 1996 till 2000 to see whether they concern freedom of shippers to use such services or are such as are opposed to the cabotage policy and would warrant sanctions from WTO in the nearest future if cabotage policy were instituted by Nigeria. This is because the negotiation were suspended in 1996 principally because the US was reluctant to open up access to its domestic maritime transport services which is heavily subsidized and protected against foreign entrance, but liberalization and opening up of such markets in the nearest future can not be ruled out. Moreover, since the exclusion and suspension on maritime transport and the failure of the WTO ministerial council in Seattle, USA in 2000, cabotage principles have not been decided by WTO as anti-competition and anti-free trade.

Even though WTO has started a new round of negotiations on trade in services (GATS-General Agreement on Trade in Services) through negotiations of domestic regulations, subsidies, government procurement of services and emergency safeguard measures, and for government to allow the provision of services in their market by foreign suppliers ("New Round of Negotiations on Trade and Services in the World Trade Organization" by David Hartridge, Director WTO), the liberalization or removal of any or some of the limitations already imposed by any country may only be achieved through negotiations between the country and its business partners. For instance, at US insistence and despite other countries objections, the Jones Act was exempted from General Agreement on Tariffs and Trade on the grounds that the Jones Act applied only

to domestic trade and had been in existence 27 years before the coming into effect of GATT. Free market and competition or liberalization should therefore not be a deterring factor to Nigerian cabotage.

2.4.2d Economic Project:-

In the same vein, the West and Central African private sector initiative has set up a sub regional coastal shipping company called ECOMARINE in 2000 to carry and deliver cargo to and from countries of the West and Central African Sub-region though targeted at economic integration of the region, is also a project which will damage, if not make impossible, the realization of a Nigerian cabotage regime and the attendant usage of it as a tool for cargo support and indigenous vessels acquisition and expansion programme. On the other hand if the Nigerian cabotage regime is in place it will make it impossible for the ECOMARINE project to operate from port to port in Nigeria without making a stop in a foreign country although it would not be stopped from delivering cargo at, and carry cargo from, a port in Nigeria and to and from outside Nigeria and from outside Nigerian waters nor limits the operation for the cabotage regime. They are therefore completely opposed to one another such that the promotion of one is the discouragement of the other. At the end of the day, the better and more national and economic interest served by any of them should determine which is to be supplied.

2.4.2e Free Marketism:-

Since the cabotage law is seen as protectionism or a policy in favour of domestic shipping which is also meant to retain the

construction and/or ownership, crewing and operation of the vessels involved in Nigerian hands, it can be said to run counter to the present international trends of globalization, trade liberalization and deregulation. Transportation is one of the four corner stones of globalization, the other three being telecommunication, trade liberalization, and computer technology.

Due to trade liberalization, governments and regional communities try to promote the trade through improved and less expensive transport services and are now becoming reluctant to prevent national and domestic maritime industries from foreign participation. Free Marketers therefore argue that a cabotage law is against the principles of free trade and that it restricts and hinder free maritime trade between countries, because of its restrictive elements; whereas deregulation forces encourage removal of government restrictions on participation in trade to allow the operation of market forces in maritime trade.

It is also argued that there is no need for strict application and enforcement of cabotage law, but at best there should only be a set of relaxed or liberalized cabotage law allowing some elements of foreign participation, if the passing of cabotage law will not be suspended altogether especially now that the Nigerian economy is in need of foreign investment. Some powerful foreign ship owners, for example, Maersk have been kicking against the promulgation of a Nigerian cabotage law on the basis that it will work against the Nigerian port being made a loading center in the region.

2.4.2f Competitive Forces:-

The position of competitive forces is that the introduction of cabotage law and policy in Nigeria will encourage and entrench indigenous monopolists in coastal and inland waterways trade, protected from foreign competition, thereby, stifling foreign competition. It is further argued that the stifling of foreign competition through restriction of coastwise trade to Nigeria with the enforcement of a cabotage law, will induce mismanagement, incompetent management, un-competitive high freight rates for inefficiency and inadequacy, low quality services by Nigerian shipowners and operators.

The Nigerian shipowners and operators will do so believing that the shippers and passenger have no (foreign) alternative carriers to patronize if they are not satisfied with their services. In that case, the passengers and shippers will be worse for it because delays, losses and damages to cargoes, innovation, modernization and high freight will be taken for granted by the monopolist indigenous carriers.

It is also argued that, if Nigerian carriers are allowed to compete with their foreign counter-parts in coastwise trade through non-introduction of cabotage law or non-exclusion of foreign ships from cabotage, coastal shipping will be more competitive and the Nigerian ship operators will work hard, become more efficient and improve their services, thus the shippers/passengers will have the freedom of choice from various carriers, cheap freight rate, shippers' accessibility to those carriers with cheaper freight charges, qualitative and efficient services, quick delivery scheduled and regular schedules departure and arrivals while benefiting from the

shipping companies' innovation and modernization (*Asoluka 2003 pp.88-89*).

Competitive forces further argue that technological development in and growth of the domestic coastwise trading industry will be stunted because international competition which is in line with deregulation and free trade operation of market forces are being shut out by cabotage laws.

It is argued that, as a result of high shipping cost caused by the Jones Act restrictions in the US, it is often cheaper for US livestock producers to import feeds from Canada than to produce it in the US whilst Alaskan Loggers find it less expensive to export wood to Asia than to the continental US, and that high shipping cost has crippled the Hawaiian cattle market. (*Cf. A Paper titled "Lobbying and Law: Don't give up the ship" by Shawn Zeller, Published in the National Journal of 01:02 & 08:99 page 53*) (*As in Asoluka, 2003, P.89*).

Consequently, it is argued that it may be necessary to weigh the benefits of protection through cabotage with the cost of producing the protection including negative external effects in order to achieve a situation where protectionism does not increase costs or distort growth in other sectors. It is argued that the returns from the growing industry must be high enough to off set the higher cost of its protection in order to warrant such protection. It is therefore, always necessary to set a time frame for the duration of the protection offered the growing domestic shipping industry within which it is removed, so as to minimize the cost of protection.

Absolute protection through cabotage law without some element of competition could be against the interest of shippers and actually

dangerous and counter-productive. Conversely, liberalization encourages free competition and less government intervention and operation of free market forces where marginal utility will equal marginal cost, and in the long-run, minimize average total cost, thereby affording end-users reasonable prices and efficient services. Thus, it removes inefficient and uncompetitive players in the market and mis-allocation of resources to unproductive sectors.

The arguments in favour of free market and competition should however not be allowed to prevent a Nigerian cabotage law from coming into existence. It has been argued that globalization does not automatically produce universal benefits and there are negative consequences of blind promotion of market principles over safety and environmental standards, seafarers' jobs are lost and their rights are denied or erased (*Cf. TTD IN ACTION: Transportation Workers and Globalization*). It has also been argued that deregulation, in the sense of reducing or eliminating government economic regulation in an industry, has nothing to do with opening competition in the affected industry to foreign companies operating under different rules from Nigerian companies in the industry.

Having a Nigerian cabotage law does not suggest that the world economy would be shut-out completely from the Nigerian maritime industry since foreign ships can still bring into and take away from Nigerian ports cargo and passengers and are only disallowed from transporting cargo from port to port within Nigeria. Nigerian policymakers responsible for international trade and the maritime industry should also be concerned with the interest of Nigerian ship owners, operators, seafarers, shipyards and the building of a

domestic fleet for the control of maritime trade which a cabotage law will produce. The danger of relying on foreign vessels or shipping companies controlled or owned by foreign companies/interests in times of emergency, national or regional crisis, makes a strong case for a Nigerian tonnage.

However, the strongest reasons for not allowing globalization and competitive forces to prevent the Nigerian cabotage law from coming into existence are that, many of the countries in the forefront of globalization and competition have their versions of cabotage laws and because of its numerous benefits to those countries, Nigerian law makers and policy makers should not shy away from making a Nigerian cabotage law just because of globalization, political and competitive forces and interests. The promulgation of a Nigerian cabotage law will ensure the development of the local shipping industry (*Asoluka 2003 pp. 89 - 90*).

2.4.3 Cabotage and Indigenous Maritime Capacity Enhancement Rationale

The rationale behind indigenous capacity enhancement is usually to create an enabling environment that gives necessary assistance and incentives in order to empower and position indigenous carriers to be able to acquire more vessels and compete fairly with foreigners or among themselves in the carriage of cargo internationally or domestically.

2.5 IMPACT OF CABOTAGE BUSINESS ON THE NATION'S ECONOMY

Increased National Tonnage and Capacity Building and

Utilization: - Restricting domestic waterborne trade to only Nigerian-built and for Nigerian owned vessels by virtue of the application of a Nigerian maritime cabotage law is capable of attracting new and higher investments in the domestic shipping sector, thereby leading to the growth, development and full capacity utilization of Nigerian shipyards and dry dockyards. A lot of private shipping companies will arise in response to opportunities that will be created by a cabotage policy and foster the growth of a national tonnage. This was part of the Malaysian experience which increased its national tonnage, after the implementation of its cabotage policy in 1980 (*Cf. Growth and Development of Malaysian Merchant Fleet, Malaysian Maritime Year Book 2000/2001, page 24 published by the Malaysian Ship Owners Association*) (as in Asoluka 2003 p.91).

Malaysian coastal fleet which has grown to a choice of modern fleet of about 900 vessels of 210 general cargo ships of 386,000 GRT; 63 Chemical Tankers of 467,000 GRT and 16 Container ships of 76,000 GRT, with about 1.4 million GRT, compared with about 500,000 GRT, in 1990, has a strong presence in the cabotage trade between ports in Peninsula Malaysia and the East Malaysian State of Sawarak. Many of the cabotage induced Nigerian shipping companies could emerge into strong coastal companies engaging in international shipping too.

Many entrants into the industry shall translate to an increased tonnage in domestic shipping, 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, repairs and conservation of foreign earnings. Even when in a liberalized cabotage regime, foreign ships are allowed to participate in the Nigerian domestic shipping where Nigerian vessels are not available or on the condition that their vessels used in Nigerian domestic shipping must be built and or repaired by Nigerian shipyards there are bound to be increased capacity utilization for the shipyards. If properly equipped to do so, the shipyards could be building new domestic trade vessels eg. tankers, bulk carriers, tugs, barges, container ships roll-on-roll off vessels, ferries, cruisers and dredging vessels, to meet indigenous needs of increased available cargo and, so, the shipyard will have enough demands to attain their full capacity utilization which, in turn would boost their present capacities.

The increased need to build, repair and maintain the Nigerian built and owned vessels in Nigerian shipyard and dry dockyards will develop and enhance indigenous capacity in shipbuilding and repair and in turn lead to more business and revenue for the Nigerian shipyards and government. The peace of mind they will get in not having to bother about sending their vessels abroad for every little repair would encourage Nigerian ship owners and shipping companies to acquire more vessels thereby increasing national tonnage.

Protection of National interest: - Increased national tonnage protects the Nigerian national interest, namely: economy, strategy and defense. Many maritime countries give various subsidies to their shipping companies and ship owners in order to facilitate their ability to compete with 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 operator to place their ship's operating costs at parity with foreign competitors.

There is also the US Federal Ship Financing Guarantee Programme (FSFGP) under the Merchant Marine Act 1936 where US-flagged vessel operators are assisted in procuring private-long term financing at favourable interest rates to build ships in US shipyard 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 national cargo transportation 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 (eg. from vessels operation 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 the Nigerian coastal and inland waterway along with Nigerian coastal ships, whose owners are not supported by such subsidies, the Nigerian coastal ships, will be placed in an unfair position to compete. However, what a cabotage law will achieve as it has been promulgated and implemented in Nigeria is that it will protect Nigerian coastal shipowners, operators and coastal trade from foreign participation, competition, and domination, since the cabotage will be restricted to only ships that are Nigerian built and or owned and crewed. That way, it will enhance continued domestic economic growth and development and keep domestic shipping jobs in Nigerian hands. It is therefore in national interest. Good enough the National Shipping Policy Act allows the NMA to make renunciations to the Federal Government in respect of ownership structure of vessels and other facilities for off-shore support services (*Cf. section 15 cap, 279 as in Asoluka 2003; p 93*).

In the area of strategy, defence or security, banning foreign vessels from coastal and inland water trade will mean the exclusion from our coast those foreign vessels that may be used for or involved in espionage against the nations internal security and defence from doing so. The development and growth of high domestic fleets 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 conflicts 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 then have the waterborne transportation needs of the Armed Forces, especially the Navy, met for quick development of Military personnel equipments 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 Army may no longer have to rely on foreign vessels or countries to achieve their aims especially when in times of national emergency or crises, 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 really give the Nigerian Army, especially the Navy, access to Nigerian ports and inland waterways and provide mobilization crew for government ship. For instance, the domestic vessels operating under Australian cabotage laws recently crewed for the intervention 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 equipments to the Middle East during the Gulf war of 1990-1991 and during the Bosnian operation of 1995. Whereas Britain that lacked a cabotage regime relied on the US

cabotage vessels in carrying its military equipments to and from the Gulf during the Gulf war.

Therefore, the Nigerian cabotage fleet can also be available for similar purpose to supplement the naval and national fleet. This would save our military the enormous cost of purchasing and manning such vessels in times of peace and conserve budgetary allocation that would have been spent on such purposes, for application to other sectors of the Nigerian economy.

Enhanced Training and Evolution: - Cabotage is also capable of enhancing indigenous maritime capacity by igniting the flame of education, training and employment of Nigerian seafarers, ship operators and ship managers since the ships to be used in domestic shipping would be Nigerian-built or Nigerian owned, crewed and operated. Presently in the US, about 124,000 persons are on jobs directly related to its cabotage, including 20,000 workers in the shipyards and 14,000 repairing and maintaining the fleet. 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, managers etc., to cope with the high demand of ships' masters and crew and also the employment of more Nigerian workers to cope with shipbuilding and repairs and ship maintenance which meet high international standards. The seafarers' exposure and experience in shipping and training will be enhanced whilst the workers in shipyards will be exposed to modern shipbuilding and ship repair technology.

This will enhance the training and accumulated experience of Nigerian seafarers and bridge the gap between the old, experienced Nigerian Seafarers who are fast dying out and the young inexperienced ones who are roaming the streets without employment and experience. The situation will also be facilitated by the recent “White Listing” of Nigeria by the IMO under the STCW 1978/95 (*Asoluka 2003, p.94*).

Moreover, maritime and transport training school will have to be upgraded and equipped with adequate training facilities and courses in order to properly train and expose the seafarers into man and run the increased tonnage. Nigerian ship owners and shipping companies will be willing to invest more in shipping knowing fully well that the Nigerian seafarers will be employed to run and operate the vessels (since cabotage insists that the vessels should be manned and operated by the nationals only), are readily available. The cabotage principle has been found to provide national training opportunities for seafarers at home and can therefore make both the nation and Nigerian seafarers 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 needs in inland waterways and domestic port, 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, Zaria and other maritime

institutions will be useful in the training of the seafarers and workers required in domestic shipping.

The International Transportation Workers Federation (ITF) supports cabotage laws as a means of a nation to secure long-term sustainability and fair distribution of employment to seafarers and as a valid method of eliminating unfair competition in what is essentially a domestic transport services along the same line as road, rail or air transport. Consequently, in its report (Cf. ITF Maritime Department Policies; From Oslo to Delhi Document, 1998 chapter five, Cabotage and Regional Standards”), the ITF states inter alia that:-

111. In many countries where the national fleet has virtually disappeared the distribution 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 training polices 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 prominence is (by the researcher) for emphasis because Nigeria is one of the countries whose national fleets have disappeared and whose seafarers would benefit from cabotage laws. In the US, for instance, the domestic merchant fleet creates 87 percent of the entire seafarers' employment and touches the US economy in every region. Nigerian cabotage laws can similarly impact its economy through indigenous maritime capacity enhancement under the programme of indigenous vessels expansion and acquisition.

Growth of Nigeria-Only Fleet:- Due to the fact that the Nigerian cabotage law will limit domestic waterborne trade to Nigerian owned, crewed and operated ships, such a law will bring about the establishment of a Nigeria-only ownership and control over the domestic fleet, domestic marine transportation system and the national maritime infrastructure. A developed and grown cabotage-induced indigenous fleet/tonnage is seen as an appropriate entry point to international shipping for Nigerian shipping companies and this will prepare them well for competition with foreign ship owners in deep sea shipping.

Since water transportation is a key aspect of the Nigerian economy, it will allow Nigerians to own, control, and retain the

ownership and control of the operation of such a key sector of the Nigerian economy thus, eliminating foreign control, domination and competition. It will also prevent avoidable damage to the Nigerian economy through foreign manipulation. It is instructive to note that even the US actualized and retains the ownership and control of its citizens through the Jones Act, and other promotional incentives such as the operating Differential Subsidy (ODS) and the Capital Construction Fund (CCF) referred to.

Employment Opportunities: - Moreover, more Nigerians are becoming employed in jobs that are directly related to the domestic shipping industry in order to provide the 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 opportunity in domestic shipping as a result of a cargo support leading to indigenous expansion and acquisition of tonnage which will increase indigenous participation in Nigerian coastal shipping business. There will be less dependence on foreign vessels, and Nigeria will be on its way to becoming at least a medium maritime nation able to compete in international sea-borne trade with other maritime nations.

Improvement of Balance of Payment: - Since the cabotage law would restrict coastal shipping to Nigerian-built and Nigerian owned ships, through building and maintaining a substantial part, if not all, vessels engaged in coastal shipping in Nigerian shipyard and dry dockyards, the foreign

exchange which otherwise would have been used to purchase and repair ships abroad by Nigerians will now be conserved.

The freight and insurance which would have been paid foreigners would now be earned and paid to Nigerians, thus improving the balance of payment situation of the country. Consequently, capital flight would be reduced if not stopped and foreign exchange would be conserved and earned within the country. These are some of the main rationale behind the development of national tonnage through cabotage by Malaysia. This has led, in the past 25 years, to the growth of the national fleet from about 400,000 GRT to about 6.60 million GRT in 1999. The most dramatic period of growth being after 1980 as a result of the implementation of the cabotage policy (*Cf. "Growth and Development of Malaysian Merchant Fleet" published in the Malaysian Maritime Year Book 2000/2001 page 23*) (*As in Asoluka, 2003, P.97*). The conserved foreign exchange earning can then be channeled towards the development of shipping and currently other socio-economic infrastructure and the reduction of the national debt put at US \$28.64 billion by the debt management office (*Asoluka 2003; P.97*).

Fair Competition: - It is also important to mention that another reasons why cabotage will enhance indigenous maritime capacity, improve the national economy, and induce fleet expansion and acquisition is that since Nigerian cabotage laws will bring about the reservation of Nigerian domestic waterborne trade for Nigerian owned, built, crewed and operated ships, all the participants in such trade will be

subject to the same laws and rules. This would be so, especially in the areas of taxation, labour, seaman's wages, shipping safety and environmental protection laws. Where government subsidies and incentive are available, the Nigerian operators and ship owners will 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 carter liner shipping and alliances with larger ships. These are not subject to federal or state taxes whilst within Nigerian ports and are backed sometimes by better expertise, experience and managerial skills, while manned with low-paid foreign crew from South-East Asian or West African countries.

Nigerian shipping companies, some of which lack some expertise, experience and managerial skills and are subjected to taxes and presently, lack government subsidies, incentives or favourable ship acquisition loans, can not compete on a level playing field with such foreign companies. So by ensuring that all shipping companies operating in the domestic transportation field compete under similar constraints, benefits and responsibilities to their workers as well as regulatory bodies and the nation, Nigerian cabotage will put in place a level playing field for domestic shipping operators. This would produce a fair competition. Shippers would have more options and compare freight rates and could dump expensive, inefficient and slow coastal operators for the fast and efficient ones. Shipping companies with better and efficient services will have the highest patronage. Increased

and increasing capacities lead to lower freight rates which will in turn bring about increasing capacity in order to bring down unit costs.

The fair competition (which can not exist where there is participation by highly subsidized foreign vessels exempted from certain 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 capacity and crew member productivity. The benefits of these will be delivered to the Nigerian coastal shipper or passenger. The increased productivity which adds to the gross national domestic product would be good for the economy and would increase the domestic fleet. It would also facilitate investment in shipbuilding, acquisition and operation because the cabotage trade will reasonably assure an intending shipowner/operator or investor in a Nigerian-built/owned ship of stability. 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 would be forced to compete in the coastal trade with the lower-cost and/or highly subsidized foreign vessels. The ITF supported cabotage laws as a good way of removing unfair competition in a domestic service.

Environmental Protection: - The cabotage law will prevent sub-standard foreign (including flag of convenience) vessels known for low safety standard from trading in Nigerian coastal and inland waterways thereby, reducing the risk of marine casualties and hazards, pollution and degradation of the

environment. This is because the Federal Government of Nigeria as part of its flag, coastal and port state controls can, through the appropriate authority indicated in the Coastal Act, ensure that before any Nigerian-owned or Nigerian-built ship is registered or licensed for coastwise trading, its inspection shows that it meets certain minimum international standards that will enhance safety and environmental protection in line with international maritime organization policy of safer shipping and cleaner oceans. This will be similar to the US coastwise trade vessels requirement, which bars vessels not filled with certain requirements from partaking in coastwise trade. Unless flag, port or coastal state controls are used, foreign ship below the international acceptable standards could easily cause mishap and environmental problems within the coastlines if allowed to partake in coastal and inland waterways shipping.

It is the submission of the researcher that, from the foregoing impact of cabotage on the nation's economy, a national cargo support and indigenous ships acquisition and expansion by the means of cabotage policy is really defensible, achievable and maintainable for the purpose of promoting, encouraging and developing the nations economy vide indigenous participation in domestic water and sea-borne cargo carriage.

2.6 THE CHALLENGES OF THE CABOTAGE POLICY.

The indirect return of indigenous investment in shipping to Nigerians is a welcome idea. There are also significant indirect economic benefits, which stand to be realized through

investment in shipping generally. These benefits may ultimately become manifest through the derived multiplier demands, which are created in association with the original shipping investments. Some of the shipping linked multipliers benefits include: the development of steel industry, the development of a viable bunker industry, the development of a victualling industry for the supply of ship stores, spares and provisions. From the foregoing therefore, it should be entirely and clearly to the independent observer that from the economic perspective alone, there are very compelling strategic imperatives which derive the proposition for increased participation of indigenous operators in the business of shipping services production, whether considered in the context of coastal cabotage or internal trades.

If one now factors in the contemporary argument about the requirements to further safeguard national security through the ability to ensure the continuity of our trading commitments using Nigerian flagged vessel particularly in times of war, and the related strategic requirement to restrict the free access by foreign vessel into sensitive coastal facilities and locations, then the argument of a Nigerian flagged cabotage and deep sea fleet become even more compelling.

CHALLENGES.

By way of recapitulation, we can very categorically declare at this point that there is no doubting the nature of the enhanced business and economic opportunity, which is currently represented by the cabotage law currently in existence. These

economic potentials can only be fully actualized through the process of effective implementation.

Having thus recognized and acknowledged the positive potentials of the cabotage regime, one is now constrained to examine the true extent to which we have become mobilized to exploit the considerable strategic opportunity, which is represented by the law force and the nature of the constraints which may stand in the way of its successful implementation.

There are clearly a number of challenges, which may make or mar the outcome of the current cabotage experiment.

Tonnage Availability Constraint: - A successful cabotage regime in Nigeria would essentially require to be conditioned on the availability of Nigerian-owned, registered and crewed vessels of the appropriate market role and description. Given that the main market vectors of the Nigerian cabotage trade consists in the operational requirements for tanker vessels as well as off-shore support craft, Nigerian shipping interests would invariably require to develop indigenous shipping fleet of the appropriate market role description and capacity in order to be properly positioned to take full advantage of the cabotage law. Ships however cost a lot of money to acquire and the source of funding would therefore need to be adequately addressed.

Financial Constraints: - Capital intensive is a generally acknowledged characteristic of shipping services production, whether considered in the context of international or coastal

application. In the context of our current effort to optimize our cabotage potentials the point must be made regarding the need to provide adequate funding support for asset acquisition if the expected results are to be achieved.

Financing for Equity Participation:- Apart from the funding requirement for ship acquisition, it must be borne in mind that, given the apparent balance which currently exists between supply and demand factors in Nigeria's coastal cabotage trade, some of the funds requirement for cabotage market entry may well be for the acquisition of equity interest in existing shipping business, rather than in the acquisition of additional physical assets which may subsequently be added to existing stocks. The problem of undercapitalization of Nigerian banks in relation to the high assets value required for vessel acquisition has been fully dissected in contemporary Nigerian shipping literature. The problem of an adverse interest rate regime in the Nigerian financial environment has also been fully elucidated and amplified.

Possible Sources of Funding: - In the light of the foregoing it would seem as if there is a need to make provision for a reliable source of funding for the vessels to be acquired under cabotage. Large sums of money are required in foreign currency and to be delivered to borrowers at a rate of interest, which would have to be competitive in relation to the cost of funds in the international finance centres. Nigerian banks certainly cannot afford to fund shipping investments with their shareholders funds for obvious reasons. One of the quickest

ways to financially jumpstart the cabotage process in the current circumstances would be to press into use any funds which may be available under the operation of the historical SASBF.

Funds sourced from the international financial institutions by Nigerian banks acting on behalf of Nigerian operators may be subject to future refinement, become the preferred method of financing cabotage asset requirements.

Human Resources Constraints and Manpower Development Initiatives: - There is an urgent requirement to commence a programme of full time training of all cadres of maritime manpower, particularly of ship officers and engineers. The importance of shipping to Nigeria's economy and the imperatives which dictate the need for greater indigenous participation in shipping production have been fully articulated. A national fleet cannot be established without a related programme for the training and certifications of the technical factors required to man and operate the vessels to be acquired under the cabotage regime.

Since the collapse of the NNSL, structured training of ships' officers and engineers have virtually come to a standstill, leading to the development of huge and yawning gap between technical factor requirements and availability. Efforts and resources are required to be committed to the resumption of structured training. As Nigeria has recently attained membership of the IMO's "White Listing", an effort should be made to restructure MAN Oron's curriculum to enable it train

cadet from induction through to the issuance of seagoing certificate by the institution.

Corporate Capacity Constraints and Development Programme for Nigerian Shipping Companies:- Additional to the requirement to assist indigenous shipping companies to buy ships and to train Nigerian seafarers to STCW standards, it is believed that there is a need to facilitate the corporate training of existing Nigerian shipping management. This training can be done through the NMA seminars and workshops on relevant ship management topics. The availability of this corporate training assistance would facilitate a rapid shortening of the lead-time for the attainment of ship management proficiency whenever the opportunity of ship owning materializes for such companies.

Implementation and Enforcement: - However good a law may be if the implementation is not properly conceived then chances are that the full impact of its promulgation may not be fully realized. Implementation and enforcement of the Nigerian cabotage laws would require necessary co-operation between the Nigerian transport/shipping administrative authority and the real indigenous industry operators in fashioning out practical workable guidelines in regards to how the cabotage regime would best be administered. At the present time, it would seem that the necessary degree of co-operation between the administrative authorities and the real operators has not been of gaffes in respect of the administrative and enforcement efforts in cabotage. Currently, it would be fair to

say that, there is very limited efforts to enforcement of the existing cabotage provisions, consequently, leaving the field wide open to continued exploitation by foreign flag vessels at the expense of local operators.

On the Guidelines for Cabotage Implementation: - Certain guidelines have been issued in relation to the cabotage law, which recently came into force. The guidelines have been issued ostensibly to clarify any areas in relation to the provision of the act and to facilitate ease of the legal interpretation and enforcement of the Acts. Regrettably, the guidelines issued have not achieved the desired effects and have in many cases actually created even greater difficulties with regards to how certain provisions in the law may be interpreted. For instance, the issue of the applicability of cabotage provision to trans-shipment cargoes was a totally unnecessary distraction, which was thrown up by the guidelines. Thankfully, the timely intervention of the Minister in setting the records straight on that issue put paid to what had threatened to develop into a long drawn out argument on the issue, given the Ministers welcome intervention in settling the matter of the trans-shipment issue, it is the industry expectation that for the sake of posterity, the written records should be quickly amended to reflect the correct position in order to avoid further misunderstanding on the matter in the future.

RE: 15-year Age Limit for Cabotage Vessels: - Another contentious challenge which was thrown up in the context of

the provision of the cabotage Act is the matter of a 15-year age limit which was prescribed in the Act in respect of vessels trading within Nigerian cabotage limit. The insertion of this provision in the Act does not appear to be guided by any objective information, but simply by the subjective view of the legal drafters that a 15-year old vessel may be necessarily better appointed than say an older better maintained vessel. We observed that nothing in any rules anywhere prescribes an age limit for seagoing vessels provided that such vessels continue always to comply to existing rules with respect to compliance with all safety provisions including the conduct of periodic inspections, dry docking, surveys, certification etc, which are necessary to validate all shipboard statutory and trading certificates.

In this regard, one further observes that the specification of the 15-year age limit for vessels which may trade under the cabotage limits is not supported by the provisions of international law (SOLAS or indeed any other international convention) on the requirement for safety and seaworthiness of a vessel or for the issuance of any of the trading or statutory certificates which are required to be carried. Enforcement of the 15 – year age limit in Nigeria would create the embarrassing paradox wherein Nigerian owned and registered vessels which are over the 15 – year age limit, which conforms in all respects to the requirement for safety and seaworthiness including the possession of all necessary statutory and trading certificates and which are licensed for worldwide trading (including Nigerian territorial waters), can

indeed trade to every corner of the earth, but not within its own coastal cabotage limits.

Enforcement of the 15 – year age limit in Nigeria’s cabotage trade would not only constrain the ability of Nigerian operators to enter the cabotage trade, it would also severely curtail the availability of tonnage in Nigeria’s coastal trade generally, as most vessels currently in trade in Nigeria’s international and coastal maritime trade, whether of Nigerian registry or otherwise, are over the 15 – year age limit proposed.

The Requirement That Nigerian Cabotage Vessels Are Built In Nigeria: -

Much as we would like to identify with any initiative which may be designed to facilitate the early industrialization of the national economy, we believe that we also need to be sufficiently programmatic to appreciate the fact that Nigeria does not currently possess any appreciable capacity for building ships and may indeed not develop this capacity for some time to come.

In the light of this fact, one believes that Nigerian Ship owning interests would be made to look decidedly foolish in a situation where they fought and succeeded in establishing a cabotage regime ostensibly in the protection of their corporate interests only to find themselves standing in the same queues as the foreign Ship owners, in respect of the requirement to obtain a waiver for the “built in Nigeria” conditionality. One

believes that necessary amendments, such as the indefinite standing down of this provision should be considered.

Documentation Requirements to be Submitted by a Nigerian Ship for Placement on the Cabotage Register: -

One believes that most of the documentary requirements specified are completely superfluous and unnecessary given that all vessels currently entered in Nigerian flag registry would ordinarily have submitted the very same set of documentation to the NMA, which is specified under the cabotage registration process. In approaching the issue of registration under cabotage, one believes that a proper distinction ought to be made between the process of statutory registering a vessel in a national flag register and the administrative process of entering vessel particulars in the cabotage register.

Whilst the process of statutory registration under the Nigerian flag register might call for the submission of the full inventory of the company and vessel statutory certificates for reference, the requirement for vessel registration under cabotage should be a more simplified process which does not involve the requirement to replicate all the documentation, including company and vessels statutory and trading certificates which may already pre-exist in the NMA's archives, in respect of the particular Nigerian vessel seeking administrative placement in the Nigerian cabotage register. Finally there is no doubt at all that the cabotage law which

was recently promulgated and is current force is a welcome development which if properly administered, would lead to the establishment of an indigenous Nigerian national fleet which would be maintained predominantly under private sector ownership.

The restrictive provisions of the Act provide a lucrative captive market, which should mitigate the ordinary cost of shipping market entry for aspiring Nigerian ship owners. Whilst the issue of technical capacity requirement appears to have been addressed through the positive demonstrations of the few Nigerian ship owners who are currently involved in active trading in cabotage, the issue of capital requirements still remains a major hurdle to be overcome given that Nigerian banks have proven themselves inadequately capitalized in relation to the asset values which are required to purchase fully founded coastal trading ships.

There is also the issue of the legal enforcement and administration. The cabotage law has achieved very limited impact so far, partly because operators who continue to interlope this market somehow believe that they can continue to disobey our laws without getting caught or sanctioned. One ought to make them think differently (*interview with Capt. Iheanacho, the Chief Executive Officer, Genesis Shipping Worldwide, by The Guardian Newspaper, February 23, 2005*).

2.7 CABOTAGE IMPLEMENTATION

According to Mrs. Mfon Ekong Paul Usoro, cabotage is a law that seeks to establish an enabling environment for Nigerians to take over the multibillion Naira maritime industries.

The law insists that all seafaring vessels in the inland waterways of Nigeria must be owned, managed and run by full-blooded Nigerians. Once an international vessel berths at its approved port within Nigeria local vessels take over from there. This holds for vessels originating from inland waterways to the coastal ports. Now, here is one wide world of opportunities thrown open to the discerning Nigerian investor. From May 2004 all foreign vessels including those ones masquerading as Nigeria's are prohibited from running the Nigerian inland waterways. The news is that the industry has been overwhelmingly dominated by foreigners mostly using Nigerians as fronts. And now is the time to transform it to a truly Nigerian dominated industry, she contended.

According to her, there are a lot of opportunities in the maritime industry, with the coming of the era of cabotage. Real business opportunities in the off-shore and on-shore transportation of oil, one can imagine the volume of trade in the lifting of oil by indigenous tankers and barges. One can also imagine the opportunities available in dredging and movement of dredging equipment. At present, all vessels involved in dredging are foreign-owned and that include manning all of these would be opened to Nigerian shipping operators in the cabotage era. It is important to realize that the tonnage and the corresponding returns that would engender

from the cabotage era can not be over emphasized. It would also impact on inter-states trade in Nigeria due to cheaper cost of transportation consequent on the movement of haulage from land to water and vice versa. It would also help relieve the burden on the roads and highways transportation of goods on to the waterways thereby encouraging internal trade.

Despite the exciting picture of greater prospects in the maritime industry, there is lack of infrastructure to support the implementation of cabotage in Nigeria.

There is a gross inadequacy in the industry at present. This is due to over-whelming dominance of the industry by foreigners. Most of the ships that are even registered here are in fact owned by foreigners or foreign investors. However, our situation is peculiar. The same was the circumstances in the Philippines export when they started developing their maritime industry. Today Philippines export skilled maritime workers to the rest of the world. The important thing is that we should start from a given point and start developing gradually. Who knows, we could also end up being a skilled manpower exporting country.

Since shipping has to do with experience, we have to start cultivating our own indigenous shipping industry which is the major thrust of the cabotage law, like the Philippines examples this by extension, would also impact on vessels

building (*Interview with Mrs. Mfon Ekong Usoro: Fortune & Class Magazine, May, 2005 pp.16-18*).

The Maritime Digest No.2 vol. 1, 2005, has it that cabotage is a legislative tool, restricting access of or reserving maritime or aviation trade within a country's territorial jurisdiction to the local capacities. The Nigerian maritime cabotage was introduced by the Nigerian government following calls by prominent maritime specialists and operators on the need for government to make concerted effort towards harnessing the indigenous maritime capacity and utilizing the abundant opportunities in the sector for the benefit of the Nigerian people in order to reverse the trend where it still has its maritime trade both territorial and extra territorial dominated by foreign operators.

The intention of the government in introducing the cabotage regime is to encourage the development of the maritime industry by an interventionist scheme aimed at boosting growth of the local capacity in the face of choking external companies and domination. Cabotage is a practice worldwide that is over 60 years old, a contemporary economic approach which justifies intervention of this nature to induce some determined result as against the classical economic approach of free market forces as an acceptable tool to achieving some set economic goals especially where competition is unfair and dominance is prevalent. It has been observed that this practice worldwide, both in marine and aviation, has been induced by diverse factors including reserving all or part of the

national market opportunity to national flag ships or aircraft either for political, economic or security reasons. Other reasons for this protective policy practice around the world are to develop indigenous human and capital capacity. These are the major aims of the Nigerian maritime cabotage.

Recently, the Federal Government released operating guidelines for the implementation of cabotage. Beyond the operating Guidelines embodying the objectives and general principles of the cabotage regime, the question of many observers of the maritime industry is the safety and protection of the marine environment element under the law. It would appear that there seems to be little or no marine protection policy embodied in the law. The content of the cabotage law is insufficient in this regard, especially, as relating to the protection of the inland territorial water environment and the preparedness of the authorities to develop the inland waterways. It had been expected that the law would have considered the diverse potentials derivable by taking a broader view of the indigenous maritime market as an ongoing cultivation of not only the indigenous marine resource potential through a well-thought out deliberate policy of protection, exploration and management. We must begin now to evolve and strengthen environmental issues and considerations not only because of their being veritable factors for sustainable development in the entire maritime structure, but also as there are strong security and economic factors generally in the final analysis.

Although, much emphasis have been laid on port management and labour reform, not much interest has gone to the development of the port environment as such. Admittedly, the structure of the ports and its administration need to be revisited from the stand point of administration and control as the ports are very vital to the whole maritime system both as infrastructure for Nigerian export trade and her national productivity. It must be pointed out that the entire port environment, marine structure and natural habitat navigability and health of the seas and territorial waters re equally important. Thus, every effort towards reform must be holistic and sustainable.

The port system in Nigeria is made up of Lagos port, Apapa, Tincan Island Port complex (TCIP) which includes Kirikiri and Ikorodu Lighter Terminals, Container Terminal, Apapa Lagos, Roro port, Lagos, Delta ports (Warri, Koko and Burutu), Port Harcourt port, Onne Federal Ocean and lighter Terminals (FOT and FLT), and the Calabar port. The state of these ports leaves much to be desired, being the nation's gateway to the world. The same is the state of private jetties and inland ports. In the reform objective, it would appear that this very vital access port facility, environment is not paramount in the paradigm of the reform formulators. Our coastal waters and inland waters stink and very precious aquatic life species are gradually annihilated.

Port activities cover a broad spectrum of maritime activities generating significant job creation and economic growth. The

movement of waterborne freight through ports has an overwhelming impact on the economy and peoples' lives. Waterborne freight consists of international cargo (foreign trade) and domestic cargo.

The place of cabotage and indigenous participation in the maritime trade within the inland and territorial waters must be viewed not just in relation to movement of goods and persons by ships, but in terms of the maintenance of this primary infrastructure of maritime, the waterways. There is need to adopt a comprehensive, serious minded effort to the development of our maritime resources in such a healthy way that produces far reaching results which ultimately are most profitable. We could take a cue from China, which has adopted a policy of developing and utilizing its maritime resources in a comprehensive way so as to also promote the co-ordinated development of the marine industry. In recent years, China has made constant efforts at upgrading the maritime fishing, transportation, salt making and other traditional industries. At the same time, it has spared no efforts to develop the industry of marine reproduction and marine culture. It has actively explored new marine resources, and promoted the formation and development of some potential marine industries, such as deep-water mining, comprehensive utilization of seawater, and power generation with marine energy. In 1997, the total output values of the major marine industries, including ocean fishing, salt – making, the salt – chemicals industry, marine transportation, and shipbuilding, topped 200 billion Yuan. As a result, these

industries have become forces actively promoting the development of China's economy as a whole.

This is a comprehensive maritime development policy from a cabotage point of view. We must begin to see cabotage as a total concept with overarching reach. Nigeria has a very strong potential in fisheries, salt production and other integrated maritime economic ventures as it pursues its diversification programme. China has adhered to the principle of speeding up the development of indigenous capacities not just in the fabrication of maritime tools and ships, manning, and other special skills but, also, moved into pursuing unique aquaculture, conserving and rationally utilizing offshore resources, actively expanding deep-sea fishing, emphasizing processing and circulation, and strengthening legal administration. Since the mid-1980s, China's saltwater aquaculture has developed rapidly, with a large increase in species and expansion of breeding areas. The output of such products rose from 1.926million tons in 1987 to 7.91 million tons in 1997, with their proportion in the total output of the maritime harvest rising from 27% to 36%. In accordance with the actual conditions of marine fisheries resources, China has actively readjusted the structure of this sector, made efforts to conserve and rationally utilize offshore fisheries resources and fishing grounds, so as to make the fishing industry constantly adapt to the changes in the structure of maritime resources.

We must take the maritime environmental protection and development policy seriously and integrate it within a wider maritime-wide policy that could be developed simultaneously; with the emphasis on human capacity and shipbuilding by a conscious promotion and preservation of the aquatic environment especially in the inland waters in order to stem the rising culture of abuse being perpetrated everyday where ignorantly, people now assume that the seas and inland waters are refuse dumps. And there is very little attention paid to monitoring the seas for illegal dumping of chemical and biological wastes in the seas. This will guarantee the utilization and preservation of our natural marine resources and protect the availability of safe drinking water for generations to come. We may need to refer to China again as it is a good example of the immense benefits a good marine development policy could have through cabotage. China attaches great importance to the protection of marine fisheries resources, and has adopted various measures to conserve such resources so as to guarantee the implementation of a sustainable marine development strategy. It has done this by instituting various closed fishing seasons, closed fishing areas, marine sanctuaries and moratorium systems, banning harmful fishing gear and methods, and restricting the size of net meshes and the proportion of young fish caught in the process.

The adoption of a consciously, applied marine environmental protection policy will no doubt, achieve encouraging economic, ecological and social results. We must now attach

importance to marine reproduction and the reproduction of fisheries resources. These are measures that must be integrated into the jurisdiction of the maritime securities authority and the ministry for environment working in concert with the ministry of science and technology to adopt such monitoring, evaluation, and assessment processes that integrate the least technology in surveillance in order to optimally utilize that God given infrastructure for economic growth but particularly the government agencies charged with the responsibilities of protecting our waters and waterways.

Today, marine tourism development policy requires massive investment by and on the coastal cities, stressing marine characteristics, and developing it region by region and sector by sector. In recent years, the aspect of maritime trade has created more than 300 marine and island tourism and recreational zones in China with a variety of marine features. Marine tourism is now a developing industry. Nigeria has very strong maritime development potentials along these areas.

The future of the Marine Transportation System (MTS) in Nigeria should be addressed now! We ought to have a dependable, safe and affordable MTS, an efficient and easily accessible system that is globally competitive, technologically responsible. Marine transportation needs to be promoted as a cost effective, energy – efficient and environmentally friendly mode. The maritime sector should be seen as benefiting communities, supporting technology clusters and providing long-term high skill career for youth.

It is the equal responsibility of the private, local, state and national stakeholders to shape the strategies and actions necessary to develop the desired state of the Nigerian Marine Transportation System and other marine potentials that will be technologically advanced, safe, secure, efficiently effective, accessible, globally competitive, dynamic, affordable, and environmentally responsible system. A public – private sector partnership will meet the challenges through shared responsibilities, accountability and agreement on funding.

When port authorities consider any development projects, they are fully prepared to avoid or mitigate adverse environmental impacts through extensive assessment works and various counter measures. For port operations, great care is also taken to avoid or minimize environmental damages, if any, caused by port activities. In other words, port management itself will be more based on an integrated and continuous system for environment management. Closer cooperation and coordination among ports, ships and local community will need to be developed to enhance port environments, thereby ensuring the sustainability of our society.

Since September 11, 2001, security has come to a top priority on the international agenda. Vulnerabilities to terrorism have become a real threat to all industries. This has led to the introduction of the ISPS Code, which came into force on the 1st July, 2004. Information sharing and other collaborative

maritime security structures have been introduced to nip terrorist threat in the bud. Also, a growing range of value – added activities in logistics is being exchanged. It is expected that by so doing, ports and other maritime activities will be safe and attractive.

With the cabotage regime and the paradigm shift in government policies towards local content and national treatment, increased local and indigenous participation in the maritime industry in Nigeria is expected. A synergy should be forged between the government, national, state and local and the private sector shipping industry and its cluster, financial institutions, importers and exporters, to develop the Nigerian Marine Transportation System to encourage and support the nations shipping firms so that they can compete on equal footing with the firms of other countries in the inland, coastal and international market place.

A major challenge ahead is to ensure that the infrastructure improvements will be in place when needed to support trade growth and that efficient personnel are trained and equipped with the necessary tools to increase efficiency while improving safety and value of services.

We must restructure the maritime industry in Nigeria so that it can ensure the availability of:

- Efficient water transportation services to Nigerian shippers and consumers;

- Sustainable aquaculture marine resource, safety and development;
- Integrated port, inland and territorial security structure;
- Adequate shipbuilding and repairs base;
- Efficient ports;
- Effective intermodal water and land transportation connections
- Sufficient intermodal shipping capacity for use in time of national emergency.
- Safe aquatic habitat that can become a tourist hub, (*Maritime Digest; N0, 2vol 1. pp 24-27*).

2.8 FLEET EXPANSION

The National Maritime Authority's Ship Acquisition and Ship Building Fund (SASBF) was suspended in 1995, following a directive from the then Head of State of Nigeria. The fund, itself, was established in pursuance of section 13 of the National Shipping Policy Act (NSPA) which was intended among other things to "assist Nigerians in the development and expansion of a national fleet". The aim is to deepen indigenous participation in the carriage of the nation's sea-borne cargo with all the attendant benefits. Before the suspension of disbursement from the fund, a number of loans had already been granted and released to private and public shipping companies totalling over \$92.0m, £214,000, and N141m (*Asoloka; 2003 p. 232*).

The general perception of the fund as a "national cake" controlled by forces of patronage, no doubt overstretched,

drained and exposed the Authority and its inability to properly play the important facilitating role of building up a competitive national fleet. The defunct Nigerian National Shipping Line (NNSL) is a classic case. Loans and Funds were continually thrown at problems such that it became an unending tale of losses incompetence and corruption. There was indeed no expectation that such loans were to be repaid. In the end, the outstanding indebtedness to the NMA was over US\$72m. Other debtors were not much better in keeping to repayment terms with outstanding and overdue amounts of \$84.7m, £247,622 and N138.7m (*Ibid*).

The funds gradually dried up as beneficiary companies defaulted in keeping to agreed terms of repayment. Yet the loans merely added 52,000 dwt to Nigeria's shipping capacity. Even at that, the vessels procured with these funds were aged, poorly maintained and consequently, their operations were fraught with numerous exposure to risk and distress.

One implication, however, is that, the statutory responsibility reposed on the NMA by the NSPA, especially in section 13, has since the suspension of the fund remained neglected to the detriment of even genuine applicants who need to be supported. From whichever angle shipping is viewed, it remains an industry characterized by high capital requirement, intense competition, and a high level of volatility both in freight rates and ship prices. Under a competitive and safety conscious environment, indigenous shipping efforts without sustainable support cannot grow nor compete and in such a

situation atrophy creeps in. And the quest for maritime development, given the nations numerous potentials and opportunities as other studies have indicated, would not only remain mere lip-service but also be lost. And this would be an enormous loss to national interest, prosperity and defence capability.

The object of governments all over the world is to enhance the welfare of its people. A responsible government therefore, uses sectoral policies and measures to enable institutions and organizations in every sector rise to the limit of their potential. Through such policies, they are enabled to contribute to the economy by becoming more efficient and more productive. This remains the way to serve the interest of the state and those of its citizens.

The challenge facing the NMA, therefore, is how to come up with policies and a strategy for policy implementation process that would promote the realization of government intention in building a competitive maritime sub-sector over time. This goal is one of the ways the potentials of the sub-sector will help accomplish the quest to diversify the nation's economic base. As the Director General of the NMA often wants to say, "The building block of maritime transportation via expansion of the national fleet is a solid foundation that ought to have been laid yesterday."

The world depends on merchant ships to transport over 80% (by weight) of all international sea-borne trade. The global

economics of the 1990s could not exist without ocean shipping. International economic integration supported by ocean transport has been developing for centuries. To create demand for ship, the trade must be sea-borne and the longer the distance over which a commodity moves, the greater the demand for ship in that trade. Thus, it is the pattern of world trade that is the most important factor in determining the need for shipping activity and, in this regard, ship owners often refer to the tonne-mile demand (one tonne of cargo transported in one mile).

Ships now transport more than 4 billion tonnes of cargo each year and the total annual tonne-mile exceeds 19 trillion. Nigeria's shipping market (including crude oil) accounts for about 596 billion tonne-miles (about 3.1% of the world total) and yet plays a very important role in the nation's economy (*cf. data on cargo throughput and traffic statistics of the Nigerian Ports Authority (NPA) in abstract of ports statistics 1997-99) as in Asoluka 2003; p.214*).

The United Nations Conference on Trade and Development (UNCTAD, 1977) in recognition of this has indicated that where national investment in shipping can be justified economically, it should be encouraged as a means of conserving foreign exchange of developing nations with an export/import potential. For developing countries such as Nigeria, foreign exchange earned from international maritime trade is a factor in their economic development.

The nation's merchant fleet companies have three categories of watercraft. They are:

- i. Commercial vessel: - These transport cargo or passengers.
- ii. Industrial vessels:- These Specialized marine functions such as fishing or pipe laying; often using specialized personnel
- iii. Service/supply vessels: - These provide support capability to commercial ships and/or industrial vessels.

Table 2.8a Shows Representative Vessel Types.

Commercial Vessels	Industrial Vessels	Service Vessels
General Cargo Ships	Suction Dredges	Tugboats without barges.
Container Ships	Drilling Vessels	Off – Shore Supply Boats.
Tankers	Semi Submersibles	Crew Boats
Liquefied Gas Carriers	Incinerator Vessels	Crane Support Ships
Bulk Carriers	Upper Dredges	Dividing Support Ships
Ore/Bulk/Oil (OBO)	Carriers of Fish Processing Vessels	Fire Boats.
Integrated Tugs/Barges	Fish Catching Vessels	Pilot Boats
Chemical Tankers	Hydrographic Survey Vessels	

However, analysis of Nigeria's balance of payment for the past three decades indicates three imbalances in the shipping industry, especially, in the areas of:

- Freight earning/conservation – loss of revenue through non – participation of indigenous shipping companies,
- Ship–ownership–only five ships (70,000dwt) owned by indigenous carriers, and
- Cargo sharing–less than 12% of cargo carried with Nigerian ships. Faced with the issue of fleet expansion, that is, resolving the demand for domestic ships, the Nigerian shipping industry has to determine its ship acquisition alternatives and cost implication of the following nature:
 - Conversion of existing ships. There are virtually no ships in the nation's fleet to convert as our surveys have indicated.
 - Charter of existing ships. Decree N0. 10 of 1987 on the establishment of the NMA mandate the Authority to allow national carriers to use chartered vessels where there is insufficient number of indigenous ships for the cargo available. Such a plan can only enrich the ship owner as the operator reaps little or no profits. The chartering of foreign fleet also brings with it some uncomfortable foreign exchange implications. Moreover, the nation cannot rely on foreign operators in times of national emergencies or wars or regional conflicts.

- Purchase of existing ships. There are two categories of existing ships, namely second hand tonnage and ship built in anticipation of demand, such as product tankers. Although, many used crude oil carriers and chemical carriers are being sold as second hand tonnages, operating the former is fraught with incessant inspection and detention by the Port State Control and a short economic life. The latter can be purchased and operated to transport petroleum products at lower costs.
- New construction—Building new ships will address the long-term increase in the nation's maritime trade. To construct a new ship is about 10% cheaper than buying it readymade. Therefore it is advisable to consider constructing these ships both locally and abroad. However, it must be noted that increases in foreign ship prices result from two causes, namely, currency depreciation and increased unit costs.

The analysis so far indicates that there is a need to reduce the demand for domestic ships through building new ships and purchasing existing ones. The number of ships to be employed, dimensions, type and construction cost should be addressed next.

2.8.1 NUMBER AND TYPES OF SHIP

A good insight into the needs of the shipping industry is obtained with respect to the number and type of merchant ships, cargo characteristics, and cargo throughput documented on Nigerian Ports. By considering the market characteristics, a competitive lead would be gained.

2.8.2 Merchant Fleet Product-Mix (Non-Oil Sector)

An examination of the cargo types involved in the sea-borne trade and the respective ship types used in lifting them over a period of 20 years (1979-80 to 2000) indicates five types of vessels (excluding oil tankers):

- Bulk carriers (dry bulk and liquid (wet) bulk): These constitute the largest segment in this potential market. The bulk carriers (the workhorses of the sea) account for over 66 percent of the existing market. Dry bulk comprises 21 percent while wet bulk comprises 45 percent.
- General cargo vessel: This accounts for about 18.0% of the existing market and has shown a decreasing trend in the volume of cargo lifted over the years.
- Containerships: These are transport cargo in utilized van without the trailer chassis. These constitute about 12.6 percent of the existing market.
- Fishing Vessels: These comprise fishing trawlers and refrigerated ships for preserving fishes and perishable goods. They constitute 2.7 percent of the existing market.
- Roll-on/Roll-off: Ro/Ro ships offer shippers the most expeditious service. They constitute about 0.6 percent of the existing market.

In summary, in order to meet the needs of the national fleet the number and types of vessels acquired should be in accordance with the ratios in table 2.8b on merchant fleet product-mix:

Table 2.8b MERCHANT FLEET PRODCUT-MIX

- Bulk carriers	
–Dry bulk	8
–Wet bulk	16
- General cargo	6
- Containerships	4
- Fishing vessels	1
- Roll-on/Roll-off	1 or negligible
Total	36

The sizing of the future fleet and the determination of the current quality and replacement tonnage require a careful analysis of the costs and benefits. But the Federal Government would have to articulate a policy and guidelines to ensure that the national merchant fleet lifts a certain volume of cargo generated by the economy. This, in turn, would be matched by correct sizing, number and types of ship.

It becomes obvious from the foregoing that, when faced with a blank order, the Nigerian ship owner must make a decision as to the market sector to be targeted. Such decision, have often

in the past, been made intuitively, due to lack of defined methods or constraints against the product-mix. It would enable organizations such as NMA, shipyards and facilities to be correctly matched against the market niche.

2.8.3 Demand on Ship Size Ranges.

One circumstance that will tend to increase the average ship size is the economy of scale that can be obtained since a larger ship would be more economical. Economy of scale has led to the design and construction of ever-larger crude carriers. Port limitations on vessel draft have been the only restraining factor on the maximum size, as evidenced by the eight meters draft limitation on Nigerian ports. In replacing the 16,000dwt ageing ship (defenders) of the defunct Nigerian National Shipping Line (NNSL), the decision would be to substitute it with a new ship (challenger) in the range of the Handy size/Handy-max (20,000 up to about 45, 000 DWT). This approach combines economy of scale with better operating economics (a higher performance design) to meet the growth in shipping demand.

Furthermore, the construction costs per unit of a cargo carrying-capacity also go down as ship size increases. Meanwhile, a construction-cost saving of about 7% has been recorded in favour of larger ships (*Asoluka 2003, pp.216-219*).

2.9 PROJECTED MERCHANT DEMAND BY YEAR 2010 (NON-OIL SECTOR)

The data for the cargo throughput of 22.2 million tonnes in 1999 provides the basis for the estimate. It approximates 22.6 million tonnes of cargo throughput in 1983. The projected ship demand has been estimated based on the product-mix composition, phased and demand-driven, with the objective of lifting at least 40% (in freight and volume of sea-borne trade) by 2010.

By 2010, it is envisaged that 12 dry bulkers, 24 wet bulkers, nine general cargo vessels, six container ships, three fishing vessels and one roll-on/roll-off ship, totalling 55 ships with a combined deadweight of 1.1million tonnes would meet the shipping demand. Table 2.9a on projected ship demand (Non-oil sector) illustrates this estimate (*Asoluka, 2003, P.219*).

Table 2.9a – Projected Merchant Fleet Demand, Year 2010.

Types of Ships	Base year/units	(Non oil sector) Year Units	Year/Units	Total/year 2010
Bulk Carrier:	2004	2007	2010	-
Dry Bulk	4	4	4	12
Wet Bulk	8	8	8	24
General Cargo	3	3	3	9
Containership	2	2	2	6
Fishing Vessel	1	1	1	3
Roll-on/Roll-off	-	1	-	1
Total	18	19	18	55
Deadweight	360,000	380,000	360,000	1,100,000
Cumulative DWT	-	740,000	1,100,000	1,100,000
Estimated Vol. of Cargo lifted	3,600,000	7,400,000	11,000,000	11,000,000
% of Vol. of Cargo lifted and freight	16.2	33.3	50.0	50.0

Note: The total number of ships is 55 with a combined Cargo-carrying capacity of 1.1m. Deadweight Tonnes

2.9.1 Projected Merchant Fleet Demand (Tanker Sub–Market).

Presently, Nigeria is the only member of OPEC that has not involved herself in the lifting of crude oil, petroleum and associated products. The non-participation in this lucrative business is based on the premise that the contract for affreightment of crude oil is based on F.O.B (Free on Board). Therefore, it presumes that the owner of the crude oil nominates the ship owner that would lift the cargo.

But foreign-flag ships require that the crew be citizens of their countries, whose wages are much higher than those of Nigerians. Table 2.9b below illustrates the disparity in wages, which could lead to higher operating costs for foreign – flag ships. Nigeria, therefore, can easily enter this market by providing the same services at lower freight rates. The United States of America, for example, has provisions which state that “foreign petroleum products may be imported in foreign-flag ships at a lower delivery cost than US product” (*Carson, et al. 1990*) (*as in Asoluka 2003 P. 220*).

Table 2.9b Typical Seaman's Monthly wages (Paid 12 months a year for 7 months work, 1998).

Rank or Rating	International \$	USA, \$
Master	3,766	7,600
Chief Engineer	3,514	7,000
First Officer or first Engineer	2,786	4,260
Second Officer or second Engineer	2,430	3,880
Third Officer or Third Engineer	2,378	3,500
Electrician	2,430	3,400
Radio Officer	2,430	3,780
Chief Steward	2,430	3,840
Boats man, Carpenter, Chief Cook, Pumpman	1,017	2,500
Able Sea Man, Motorman, Oiler, 2 nd steward	921	2,250

2 nd Cook, Messman	799	1,000
Ordinary Seaman, wiper	711	2,140

Source: Butman (1998) (as in Asoluka 2003, P.221).

The analysis of the crude oil, petroleum and associated products lifted between 1995 and 1999 follows. Based on 2.9c, an average of 94 million tonnes of crude oil and eight million tonnes of petroleum products are considered for this estimate. In order to lift 50% of these products by 2010, four Panamax Tankers (80,000dwt), 12 Capesize Tankers (125,000dwt), and 16 Hamptonmax Tankers (150,000dwt) are required.

The projected ship demand for this sector is illustrated in Table 2.9c.

S/N	Type of Cargo	1996 (TONS)	1997 (TONS)	1998 (TONS)	1999 (TONS)	TOTAL (TONS)
1.	Crude Oil	86,420,804	99,667,433	97,953,211	92,463,264	376,504,712
2.	Refined Petroleum	7,743,137	6,877,407	7,238,965	8,108,736	29,968,242
3.	Sundry Gen. Cargo	2,401,129	3,302,573	3,513,201	3,934,217	13,151,120
4.	Containerized (dry) Cargo	900,996	2,173,687	2,474,994	2,808,256	8,357,942
5.	Cement	1,044,686	1,183,274	1,784,571	2,250,221	6,262,752
6.	Wheat	832,314	1,132,573	1,470,766	1,400,954	4,836,507
7.	Sundry Bulk (Dry) Cargo	666,114	1,220,267	1,175,270	1,022,780	4,084,431
8.	Sunday Bulk (Dry) Cargo	135,166	218,254	658,439	1,872,202	2,884,061
9.	Fish	411,509	435,604	558,177	605,649	2,010,939
10.	Vehicles	38,729	38,253	68,812	129,912	275,706

11.	Vegetable Oil	34,376	20,913	6,297	-	61,586
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The above is Table 2.9c – Ranking of Cargo throughput All Nigerian Ports (1996 – 1999) including crude oil.

Primary Source:NPA

Secondary Source: NMA

Table 2.9d – Projected Merchant Fleet Demand, Year 2010 (Oil Sector) Tanker sub– market.

Type of Ship	Base year 2004/Units	Year 2007/Units	Year 2010/Units	Year 2010/Total
Panamax Tanker (Chemical Products)	2	1	1	4
Capesize Tanker	4	4	4	12
Hamptonmax	4	6	6	16
Total	10	11	11	32
Dead weight –Panamax	160,000	80,000	80,000	320,000
Capesize	500,000	500,000	500,000	1,500,000
Hamptonmax	600,000	900,000	900,000	2,400,000
Cummulative dwt Panamax	-	240,000	320,000	1,500,000
Capesize	-	1,000,000	1,500,000	1,500,000
Hamptonmax	-	1,500,000	2,400,000	2,400,000
Estimated vol. Of Cargo lifted, dwt –panamax	1,920,000	2,830,000	3,840,000	3,840,000
Capesize	6,000,000	12,000,000	18,000,000	18,000,000
Hamptonmax	7,200,000	18,000,000	28,800,000	28,800,000

% of Vol. of Cargo lifted and freight –Panamax	24.0	36.0	50.0	50.0
Crude Oil	14.3	32.0	50.0	50.0

Note: The total number of ships is 32, with the combined Cargo-carrying capacity of 4.2 million deadweight tonnes.

2.9.2 Industrial Vessels.

These vessels are owned and operated by multi-national oil companies prospecting for oil and a few private operators that provide support services. The number of these vessels has not been officially documented, but our survey shows a continued rise in the number and size of off-shore vessels that include floating platform for the storage of oil (FPSOs), oil rigs, oceaneering vessels etc.

2.9.3 Service/Supply Vessels

Coastal vessels are the predominant water crafts in this category. There are basically three categories of coastal vessels presently operating in Nigerian waters:

- (a) Service Vessels
- (b) Dry Cargo Vessels, and
- (c) Wet Cargo vessels

(i) Service Vessels: These are vessels mainly of less than 1000dwt needed in the oil/rig operations in the country's oil fields. They are for the movement of men, material and in some rare cases, anchor handling. These are special crafts

built just for anchor handling operations that are presently engaged in the above services in the oil industry.

(ii) Dry Cargo Vessels: These vary from the small (500dwt) general commodity carriers to the most common pliers (of 2500 – 3000dwt) used in the west coast trade. They pick mainly commodities such as plastic products and food items from Nigeria to neighbouring countries along the coast. They, in their return trip pick salt or any other products from Senegal or any other port along the coast.

(iii) Wet Cargo Vessels: These vessels come in different shapes and sizes - from small self-propelled barges of say, 450dwt to coastal carriers of, say, 20,000dwt. The self-propelled barges, mostly owned by small quantity, are involved in bunkering and small operators' movement of products such as A. G. O, Aviation Kerosene, Domestic Kerosene, PMS, LPFO etc. Their operations are usually limited to ship-to-ship (STS) transfers, jetty to jetty, (JTJ), Ship to jetty (STJ) and loading and discharging operations. Their products carrying capacity vary from 300MT to 2000 MT.

(iv) Dumb Barges: These, as the name implies, are without engine for propulsion. Some are fitted with pipes and Cargo pumps for "load and discharge" purposes whilst some are without pumps. The capacity (Load) of these vessels ranges from 200 MT to 1500 MT. The self-propelled barges usually for fresh water supply and products carry them. Their movement is always with the aid of tug(s). The exact number of units of the watercrafts named above is not documented

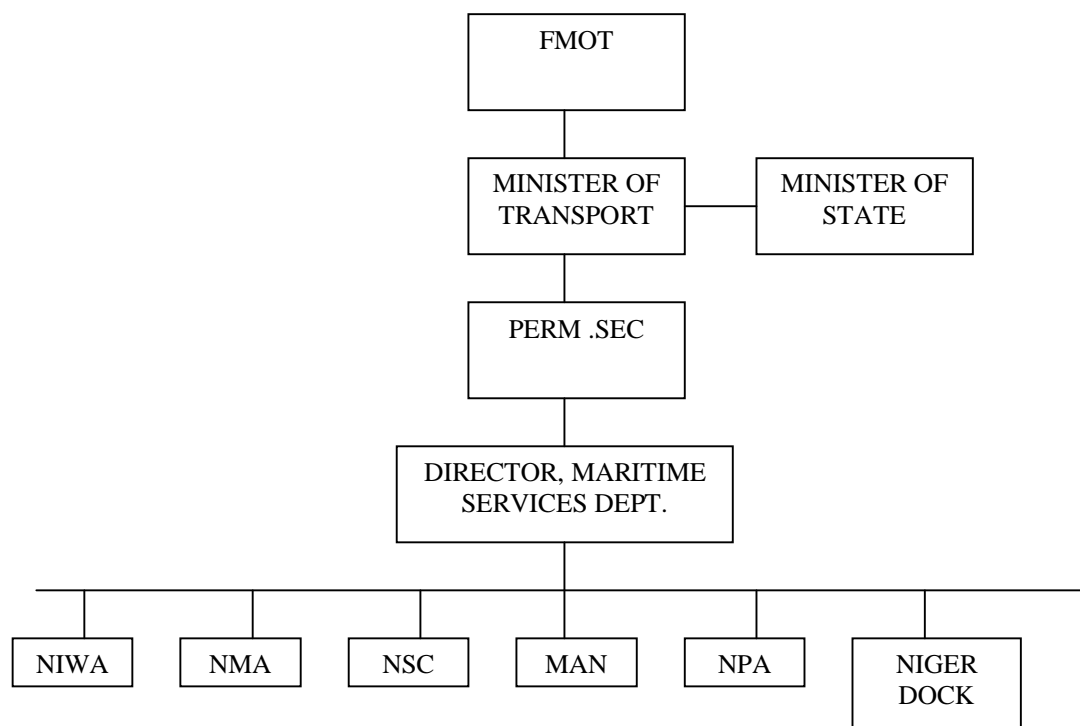
but these are demand-driven and it is on the upward trend (*Asoluka; 2003. PP 219 – 223*).

2.9.4 Maritime Expansion Financing Needs

The best approach to appreciate the financial outlay required to bring the nation's maritime sub-sector into reckoning is to take a close look at the sector, examine the nature and scope of the services it provides and finally determine the adequacies of support of such services in the light of the demand generated by various kinds of maritime and allied activities.

2.9.4i- Maritime parastatals Under FMOT: An examination of the maritime service can only be done comprehensively by surveying the various agencies coordinated by the maritime services of the Department of Maritime Services in the Federal Ministry of Transport (FMOT). This department is charged with the duty of formulating and implementing government policies aimed at improving maritime practice, and efficiency through the instrumentalities of the various maritime parastatals. A scheme of relationship of these parastatals with the FMOT, is outlined below:

Figure 2.9.4a **MARITIME PARASTATALS UNDER FMOT.**



From figure 2.9.4a above, it can be deduced that, maritime parastatals that report to the Minister of Transport through the Director of Maritime Services include Nigerdock (which has been jettisoned, that is, sold out), Nigerian Port Authority (NPA), National Maritime Authority (NMA), Maritime Academy of Nigeria (MAN), Nigerian Shippers Council (NSC) and National Inland Waterways Authority (NIWA). These agencies broadly cover the maritime services industry. From the NMA's regulatory and promotional functions which include attending to the nation's drive towards fleet

expansion, NPA's provision of essential linkage services to ships and cargoes, NIWA's handling of inland navigation and domestic vessel needs, NSC's shipping protection role to NMA's training portfolio, there runs a common thread of providing services to the nation's maritime needs. Complementing this role is Nigerdock's responsibility in shipbuilding and ship repairs. In order to assess the nature of expansion of these facilities and services, a more detailed role/functional review is important.

2.9.4ii: Cargo sufficiency in Nigeria: The business of shipping arises from sea-borne trade. Because, the success of shipping is contingent upon the availability of sea-borne cargo, we propose to examine whether or not there is cargo sufficiency in Nigeria. Much of this has been done by other researchers, especially, the study on Cargo Support Programme (CSP) such that what is done here, is to present a nutshell of the findings.

Cargo throughput, a Nigerian seaports for the period 1996 – 1999 as can be seen from the table below, reveals a total of 376,504,712 metric tonnes of crude oil requiring about 2,667 tankers to lift.

Table 2.9.4iia – Cargo Throughput at Nigerian Seaports.

Year	1996	1997	1998	1999
General Cargo	4,752,363	5,950,117	6,615,184	7,478,043
Dry Bulk	2,810.359	3,516,114	4,806,833	4,773,955
Crude Oil	86,420,804	99,667,533	97,953,211	92,463,264
Others	7,912,579	7,116,574	7,903,701	9,980,938
Total Trade	101,896,105	116,250,338	117,278,929	114,696,200

Source: NPA Abstract of Port statistics, 1997 & 1999

Also, refined petroleum for the same period was estimated at about 30million tons. Sunday General Cargo, containerized cargo and cement provided about 28m tons from NPA abstract of statistics, the summaries of containers discharged and loaded at Nigeria seaports from 1997 – 1999 were about 301,000 TEUS and 80,596 40' containers were discharged while a total of 108,654 TEU'S and 10,431 40' containers were exported.

A further decomposition of the crude oil shipping activity from Nigeria to African countries is shown in Table 2.9.4iib. For 1999, a volume of 19,180,582 MT of crude was exported to various African countries 24,482,567 MT in 2000, and about 6,358,529 MT for the first four (4) months of 2001.

Table 2.9.4iib Nigerian Sub-regional Trade.

Year	1997	1998	1999	2000
Volume of Import	288,956	181,279	72,303	-
Export of Crude oil	-	-	19,180,582	24,482,567
Export of non-oil product	2,201,956	2,583,279	19,252,885	24,482,567

Source: Compiled from NMA & NPA Abstract of Port statistics, 1997 & 1999.

Out of the 2667 tankers that called at Nigeria's oil terminals, for the period 1996 – 1999, only one (1) was recorded as a Nigerian flag as shown in Table 2.9.4iic below.

Table 2.9.4iic – Number and NRT of Tankers that Entered Nigerian Terminals, 1996 – 1999

Year	1996	1997	1998	1999
Total Number	629	693	766	639
Total NRT	41,126,605	64,713,740	44,924,309	40,561,719
Nigerian Number	1	NIL	NIL	NIL
Nigerian NRT	95,283	NIL	NIL	NIL

Source: NPA Abstract of Port Statistics, 1997 & 1999.

2.9.4iii: Nigerian Coastal Trade: From the study conducted by a consortium's consultants, the following findings were made:

- (a) The volume and traffic of petroleum Cargo loaded and distributed /discharged treated as domestic tanker shipping is high. The figure is about two million metric tons for an average year.
- (b) The business of carrying petroleum and its products in the domestic sector is still being highly dominated by foreign tankers.

- (c) Unlike Malaysia where the domestic shipping companies have a strong presence in LNG shipping, Nigeria's LNG, by an existing Act, is precluded from the coverage of the NSPA. Even though, this law enacted in 1993 was supposed to offer vital incentives to encourage investment in this area, the volume of transactions and financial implications call for a more mutually beneficial review.
- (d) In the event of a cabotage regime in Nigeria, there is evidence that there would be a drastic increase in tonnage for indigenous shipping companies.
- (e) The scope of off-shore oil activities is on the increase and would require off-shore service vessels. Consequently, there is the nagging issue of vessel sufficiency among Nigerian shipping companies for this viable trade.

2.9.4iv: Inland Transport: Nigeria's inland waterways system is still at its infancy and naturally saddled with teething problems. Presently, inland transport activities are noticeable only in Lagos, the Delta region and River Benue. The activities involve mainly the movement of passengers and small tonnage of cargo in the major rivers and creeks. Table 2.9.4iva, indicates that only 19 passenger vessels with a combined NRT of 911 and 10 Motor ferries with a combined NRT of 1151 operate in these rivers and creeks. Of the 19 passenger vessels, only one has NRT above 100. The motor ferries generally have NRT above 100 but are seldom operational. This may be attributed to frequent breakdown and management problems. Records of age distribution is however not available for the motor ferries. In the case of the passenger vessels, age

distribution ranges from three years to 36 years averaging at 12 years.

Given the geographical distribution of the Nigerian Markets, its population and cargo throughput in Nigerian ports, tremendous investments exist in Nigeria's inland waterway transport and could be exploited to national advantage with proper planning. Before taking advantage of this potential, there is a need to continually dredge the rivers and its approaches. This creates the demand for dredging vessels, rightly classified as part of cabotage services.

Table 2.9.4iva: Vessels Employed in the Nigerian Inland Waterways.

Type of vessel	Total No of Vessels	Total NRT	NRT > 100	Average Age as at 31:12:2000
Passenger	19	911,455	1	12years
Motor ferry	10	1161.46	8	N/A

Source: NPA Abstract of Port Statistics, 1997-99.

2.4.4v Shipyards: Although many shipyards claim to exist in Nigeria, only a few are presently operational, Nigerdock Nigeria Limited (Nigerdock) appeared to be the most active. Its main activities included shipbuilding and repairs. Statistics indicate that in 15 years period, (1986-2000) of its existence, Nigerdock constructed 28 vessels and repaired 218 along quay. The constructions were dominated by five types of vessels. These were mainly passenger ferry, mooring launch, harbour launch, water bus

and vehicular ferry. Recently, it started off-shore facility construction.

It is clear that at the moment Nigerdock serves limited segment of the indigenous shipping industry, basically the waterways. This limitation derives mainly from inadequate and deteriorating equipment and facilities being used by the company. However, in the past three years the company has been able to upgrade its capacity to produce up to 30,000 gross tonnage vessels comprising mainly tugboats, coastal tankers and supply boats which find a wide market in the sub-regional trade (*Asoluka 2003, p. 248*).

The recent privatization of the company with the acquisition by Global Energy /NC Dermott Consortium of 51% of its shares (formerly owned by the Federal Government of Nigeria), spells a new era for Nigerdock. It is expected that with a more focused management and the injection of more funds, the company will be in a position to build adequate capacity to support the indigenous shipping industry, in Ship construction, maintenance and repairs.

2.9.4vi Ports/Terminals: The Nigerian ports system is a vital element in its transport system. It provides the critical access to domestic and overseas markets as well as serves national defence/security interests. With the first established in 1955, there are now eight ports with several terminals, handling over 35m Metric tons of cargo. For administrative purpose, the ports and terminals are grouped under three zones as follows:

- (a) Western Zone comprising

- i. Apapa part
 - ii Tin Can Island Port
 - iii. Iliri Lighter Terminal
 - iv. Ikorodu High Terminal
 - V. Ijora Wharf and
 - vi. Fisheries Terminals
- (b) Eastern Zone Comprising:
- i. Port Harcourt Port
 - ii. Onne Port
 - iii. New Ocean Terminal Port and
 - iv. Calabar Port with all other ancillary Wharves and Jetties.
- (c) Central Zone Comprising
- i. Warri Port
 - ii. Sapele Port
 - iii. Koko Port, and
 - iv. Burutu Port

Of these ports, those in the Lagos Ports Complex (Apapa, and Tincan Island) handle over 70 percent of cargo throughput. The increased involvement of the nation in international trade is putting more pressures on the equipments, infrastructure

and services of the ports that very often there are indications of congestion. The situation is further aggravated by the scale of the ports which calls for massive rehabilitation, provision of sufficient equipments, and the overall need to overhaul all port services.

With the proposed privatization/concessioning of the ports, there is the need to support certain efforts to improve efficiency, safety and productivity of the ports. One other area that is crucial to the transformation of the port in the intermodal framework is the landside connection infrastructure, (by rail and roads). This measure is a key factor in reducing the impediments to freight movements and improving traffic flow, both at ports and on the highways.

Apart from the use of port privatization/concession, to improve its activities, there is also another move to situate storage, delivery and distribution of cargoes outside quay apron. The increased reliance on terminals, both contiguous and dry ports, invites more action in terms of planning and funding in order to extensively improve maritime infrastructure. All these activities require trained personnel.

Other services, such as stevedoring, ship management, ship brokerage, insurance, flag administration, classification, societies, fuel and lubricants, equipment manufacturing and supplies etc; are quite essential in the development of a maritime service delivery. For optimal maritime services, these services require closer attention and support.

2.9.4vii Scope of Fleet/Maritime Infrastructure Expansion:

The study on Cargo Support Programme has proved the nature, type and volume of cargoes dealt with in Nigerian ports. This has made a case for a deliberate cargo support programme hinged on indigenous participation (*Cf. Section 14 of NSPA*). This is the so-called public cargo. In terms of participation, a case was made to the effect that indigenous companies should be involved in order to develop competence and competitiveness over time. The conclusion was that it is not only necessary for the development of the sector, it is also defensible both on grounds of strategic security consideration and on its catalytic economic impact.

One major pitfall, however, in the attainment of this critical position is the non-availability of Nigerian vessels. Another is the level of competence and the critical issue of expanding the fleet, if the aims of NSPA, even if amended, were to be realized. In a similar view, a study has shown that with the suspension of the Cargo Allocation and Ship Acquisition and Ship Building Fund, the local tonnage has been shrinking. In fact Ekwenna (2001) has noted that from 26 vessels of 502,000 DWT in 1977, the position is now that of 70,000 DWT of five ships. Arising from this, he concluded that “Nigeria has lost the ability and capacity to generate and conserve revenue on foreign exchange through non-participation in the lifting of international sea-borne trade generated by her country.” Apart from the balance of payment (BOP) implications, its negative impact on seafarers’ employment and national defence interests cannot be quantified.

The same study has it that, resolving domestic ships' demand entails the following choices:

- Conversion of existing ships: since there are virtually no ships in the fleet, this is not an option to be considered.
- Charter of existing ships: Though allowed by the NSPA, it does not offer a permanent solution as the dividends flow across borders and cannot be relied on in times of national emergency or war neither can it be sufficiently reintegrated to impact positively on the economy.
- Purchasing existing ships (secondhand building or new ships from shipyard). This can be used to meet instant demand but has the draw back of state of customization, technology and maintenance issues if an old one. Besides, such ships can easily become targets for Port State Control attention.
- New construction: This entails building new ships which normally addresses long term expectation of demand. Although, this offers flexibility, it must also be borne in mind that the prices are generally higher. However, the various stages of construction work involved may offer respite in funds outflow. Also, there are a number of possible structures and deals available with shipyards.

Whichever combination is chosen, the fact remains that there is a strong need to increase domestic tonnage if Nigeria is to reap its maritime potentials. In this regard, Ekwenna's (2001) study and that of NMA's management have indicated the following Merchant Fleet Product – Mixes.

Ekwenna has advocated that in replacing “16,000 DWT ageing ships (Defenders) in the defunct NNSL, the decision would be to substitute them with new ships (Challengers) in the range of Handy size/Handy max (from 12,000 up to around 45,000 DWt) range. The approach combines economy of scale (a larger ship) with better operating economics (a higher performance design) to meet growth in shipping demand.

Another study carried out by NMA management decided on “retonnaging three (3) key market segments, including ocean – borne trade, sub–regional shipping and coastal shipping” (*Asoluka, 2003, P.253*).

Ekwenna's projection, perhaps for a 10 year period, “will entail an initial investment of about \$200million from the escrow account (SASBF) kept by the NMA and there would be an additional funding of \$100m to expand the Nigerdock ship Repair and Building Company to effect the transformation.” Whether the amount specified for acquiring the 25 ships, that is 600,000 DWT in the “cradle period” (i.e 2002 – 2003), is sufficient or not remains doubtful.

The other proposal from NMA management on sectoral retonnaging calls for a more in-depth view. Looking at various

statistics, ships of over 128,800 DWT, and three (3) passenger vessels, at a protected cost of \$888million is considered realistic. However, it may be quite an effort pooling the money together and for how long. Before going to the issue of funding the fleet expansion programme, it is important to return to the question of the need to expand the scope by the fleet and other maritime infrastructure.

The case of NMA's responsibility to develop on competitive domestic shipping industry has clearly been made. Not only is this desirable for the economy, social and defence interests of the nation, it is also, one area where efforts must be concentrated to realise the domestic maritime potential as well as broaden the revenue base of the economy. In spite of the wave of liberalization and deregulation the issue here has not been the advocacy of government coming in to participate in shipping business, directly. It is the case of inviting government to use its regulatory and promotional instruments to develop the economy and improve the well – being of its citizens.

The wave of privatization/concessioning cannot be read as a design to prevent domestic shipping from becoming competitive and growth bound. In fact, it is in furtherance of economic growth that a clear strategy be involved to reduce the disadvantage which competition with foreign shipping companies (which are in one form or the other subsidized) pose to domestic operators. Apart from various supports government give to their nationals, they pay a much lower interest rate, their exchange rate is stable, and their business

climate is certain and supportive. A Nigerian shipping company exposed to their soil of competition without support from its government cannot survive.

To make the domestic shipping industry competitive, there is therefore the need to introduce a supply – side intervention as well as the demand – drive measures. Other sectors of the economy, including the sister institutions of banking, insurance and other transport modes like aviation and land transport enjoy this regulatory protection. Supply side measures, as can be seen, include grants, soft loans, subsidies and fiscal incentives. To bring this about, there must, ipso facto, be a fund created as intended by section 13 of the NSPA. However, the funds' scope of application must extend to key areas that must be nurtured to add to Nigeria's maritime competitiveness.

A Reactivated Fleet Expansion and Maritime Infrastructure Development (FEMID) should make provision for the following:

(a) **Vessel Acquisition Fund:** New and secondhand buildings for the markets to be decided on. However, after analysis of the market, the priority markets should include:

- Offshore supply vessels,
- Coastal Tankers
- Tankers for Regional Trade (African Routes), and
- New Generation Tanker (1) for long haul.

(b) **Vessel/Infrastructure Repairs and Management Fund:** These small bits of loans will help in massively reconstructing and repairing existing tonnage with sufficient economic life.

(c) **Maritime Infrastructure Fund:** Floated to fund efficient terminal /ports operations in a privatized and intermodal framework. The value of this to the entire maritime system is immeasurable and impacts positively to costing.

(d) **Shipyard Expansion Fund:** This element of financing is needed urgently to cope with the demands of ship and boat repairs, maintenance and construction in the “capacity cultivation period,” (2004 – 2008).

A privatized Nigerdock needs solid recoverable assistance to play its role adequately and competitively.

e) **Operations Construction and Repairs Differential Subsidy Fund:** The NMA should begin to promote the use of local shipyards for the above purpose by subsidising whatever differences they may pose in charges and costs. The researcher suggests that, the financing structure of this fund starting with NMA's seed capital should be diversified as follows:

- a) Applicant's contribution 10 percent (min)
- b) NMA, Bank of Industry & Other Agencies 30 percent
- c) Primary Lending Institution 10 percent

- d) Other Syndicated Interests (Consortium of Financial Institutions) 50 percent.

2.9.4viii- Size of Funds and Duration: In the short-run, (1-2years) the strategy is to build up a fund of at least US \$150m based on the contribution ratios in the last sub-heading. This fund will be for procuring vessels needed immediately for cabotage purpose as well as other essential acquisitions. A further study may be prompted by this episode. In the mid-term, the NMA should seek to explore all bilateral and shipyard liaisons and take advantage of several deals, leases and supports on offer. It is important that, within the first two phases, support should be granted to shipyards, other maritime infrastructure and services. Within the period of four years, NMA's fund should have grown to about \$500m revolving the fund. This amount should constitute the limit until a further review. It must be pointed out that this limit for the revolving fund including direct funds contribution and use of guarantees where applicable. Details could be worked out by the Business Development Unit, supported by consultants.

Apportionment and disbursement from this fund should be based on modalities recommended by experts. However, there should be a clear policy to weigh disbursements in favour of areas which the NMA, from careful studies, would have determined to be most deserving, considering its mission of building a competitive domestic shipping industry. However observations made above under SEMID should inform the rationale and priority and could be reflected in

further studies and analysis to provide guidelines and specific industry needs and responses.

2.9.5 Review and Assessment of Past and Current Situation on Ship Acquisition/Ship Building Fund.

A review of SASBF: The NSPA in section 13 clearly spells out the mandate of the NMA which is to assist Nigerians in the development and expansion of a national fleet. In other words, one vital parameter to assess the performance of the NMA could be to evaluate the extent, quality and sustainability of support it has offered the indigenous shipping operators acquire or repair their vessels, and also, forms of operational support it has given to make them remain in business.

Earlier, the researcher made a referral to what could have been the cause for suspending the Ship Acquisition and Ship Building Fund (SASBF) in 1995. What we propose to do here is to visit the instrument of fleet expansion schemes, analyze the suspended SASBF together with its operational guidelines, nature of loans and its loans recovering mechanism, even if not within the whims of this particular study, (because of lack of time and other logistic problems) that prohibit the researcher from doing so now, it will surely be done at a later date. This is expected to throw more light on the causes of failure of the scheme.

2.9.5i Comparative Fleet Expansion Scheme:

The USA, apart from the various fiscal incentives offered to traditional maritime nations, also extends quite a strong

support by way of financial aids to her shipowners especially by investing in, and encouraging them to patronize local shipyards. By this strategy, two goals are achieved. Not only are the shipping services offered by their nationals indirectly subsidized with the goal of an enhanced competitiveness, their shipyard also grow stronger to support the economy as well as provide social benefits of massive employment generation.

2.9.5ii- The suspended SASBF:

This Fund was established by the NMA pursuant to sectors 13 of the NSPA. Apart from the fact that this very important instrument for expansion of national fleet was given only one (1) section with four (4) brief subsections by the Act failed to provide sustainable, self-revolving mechanism for the fund. It rather placed, in sub-section 13 (4), the responsibility of providing “general procedure and guidelines for the administration and the carrying into effect the purposes of the fund”, entirely on the shoulders of the Minister.

Unlike its United States counterpart, the SASBF was imprecise, ambiguous and susceptible to manipulations and extraneous influences, to the extent that, there was no way the fund could have been revolving. The Act did not even clearly suggest this vital element. Also, the fund was not truly established, no clear mandatory rule was made on its funding, the credit limits and monitoring/recovering mechanism were not spelt out. Compare this with the USA maritime Act, 1936,

Title Xi. These lapses obviously made the task of administering the fund quite difficult for bureaucrats who must accept in the absence of clear restraining laws, in the influence of their political masters. Even at the point of financial exhaustion of the Authority, it is intriguing that requests for loans and approvals to such loans were still being forced on the NMA; meanwhile, the rate of default in keeping to loans granted was very high. Indeed, the suspension of further disbursement from the fund was sound and informed. There was a need to take stock, review strategy and procedure as well as general evaluation of performance.

That the scheme failed is not an issue of debate. First, it was not properly funded neither was it replenished, given the poor repayment response by the scheme beneficiaries. Second, in spite of the amount of money granted, all the addition recorded in domestic tonnage was mere 52,000 DWT. Worse still, the average age of the so-called vessels required was over 25 years, considered in shipping circle as the limit of useful engagement of dry cargo vessels and 20 years for tankers.

How was the fund given for this type of tonnage acquisition? The operational guidelines and procedure used by the defunct SASBF, as noted were quite susceptible to extraneous influence. Not only were the evaluation and approved processes for loan requests done in-house by bureaucrats who could easily be instructed against their judgment, the approval loans were also disbursed direct to loan beneficiaries. In this circumstance, it was not easy to confirm

whether loans were actually utilized for the purposes they were granted.

The post-approval process only involved an assent from the ministry where after the beneficiary was requested to forward certain particulars and information. Lack of control of the vessel acquired accounted for the poor repayment record and also the quality of vessel. One more debilitating factor was the issue of loan amount approved. It would appear that certain decision to reduce loan request were taken arbitrarily, regardless of the actualization of the purpose of request. In a situation where the Authority could not grant loan request in full, needed detailed renegotiation and alternative financial leverage should have been ascertained. The practice of handing over to applicants what the Authority could afford to give as loan was an indication of loose financial appraisal and monitoring mechanism. It was an invitation to failure for the fund.

The loan structure offered by the Authority for a maximum of six years reflected poor understanding of the shipping market and presented a triple tragedy. For old vessels with high maintenance costs, not only was a moratorium of one year insufficient, the compression of repayment tenure to between three and five years also implied an exaggerated view of the earning power of the acquired ships. It created little room for cash flow problems which were common in shipping yet the age of the ship could not permit a longer amortization schedule. Also, granting loans ranging from \$.5m to \$2.5m to

private shipping companies to acquire old ships for tramp operations reflected poor analytical and technical judgment.

Another major defect was the issue of age, route and viability of acquired vessels. These indeed reflected the status of ship appraisal, credit analysis and operational techniques used by the NMA. A closer examination of each of the requests would have sent signal as to their viability. The case of the NNSL was even more depressive. Money was just thrown in at problems, not minding their nature, demand and timing. Indeed there was no way such funds could have been recovered. In the end, the SASBF lost all the funds amounting to US \$53, 619,493 granted to the NNSL. For now, a total of US \$18,975,880, £64,622 and N135m Naira remained outstanding.

On the part of the loan beneficiaries, defaults arose from both internal factors peculiar to shipping companies and external ones that were beyond their control. However, a sound business plan must include a thorough feasibility study with sufficient provision made for variance based on painstaking sensitivity analysis. Not only was their judgment in ship markets, route and ship specification suspect, there were also indications of the absence of track record and commitment to the venture; and a poor management and understanding of the key critical factors for survival of shipping business in the Nigerian environment.

With little statutory support to enhance their competitiveness, there was every likeli-hood that such investments could run

into troubled waters. At the point of business distress, no conflict reduction mechanism was erected. The creditor and borrower were just not meeting to find solutions. Even the well meaning and determined ship operator could not be helped as no particular instruments were in place to address each case on its merit. The result is that, out of eleven beneficiaries only two could be said to be performing.

In a nutshell, the SASBF failed, not because it was a bad policy. However, the law was sketchy, full of gaps that encouraged arbitrariness, political influences and implementation by an institution exposed to such dangers. From NMA, there was absence of rigour in handling loans appraisal, disbursement, and monitoring and recovery mechanisms. All these gaps exposed the authority even more to outside influences. The beneficiaries showed little preparedness for a volatile sector like shipping investment. It would appear as if most of them merely sought to avail themselves of the available fund which they perceived as a national cake. That object of the SASBF, in a way, encouraged this feeling as it implied that the national fleet must be expanded regardless of its sustainability and competitiveness. Given the absence of these key qualifiers, it was the case that decisions rested more on non-financial/non-economic criteria. Consequently, the national fleet could not be expanded on the structure and procedure of the defunct SASBF (*Asoluka 2003. pp. 257-262*).

2.10 STRUCTURE AND SOURCES OF SHIPPING INVESTMENT FINANCE:

(i) Global Trends: The current situation world – wide is that government support shipping through policy and regulatory means to enhance the competitiveness of their private shipping concerns. This arises from the very nature of shipping business which is fiercely competitive, capital intensive and safety conscious, and within investment, is further exposed to the slippery terrain of market volatility. Both ship prices and freight rates have been known to move in fits and bursts. Yet, government has recognized and pursued measures to support shipping on points of both economic and social expedencies. The benefits outweigh the costs in the end.

In order to ensure the viability of shipping, individual governments have adopted the use of a combination of instruments to intervene, either on the supply side or the demand side of maritime service. Another study on cargo support programme (CSP) has dealt extensively on the issue of demand – side intervention in shipping. What can be added is that this policy is often criticized as protectionist and anti-trade.

However, the instruments of supply – side intervention remain commonly used more by the so called liberal maritime nations. Although in a strict sense, such intervention could distort the efforts of market forces, it has been distinguished from the demand – side intervention. Instruments include financial assistance in the form of soft loans, grants, subsidies, guarantees and fiscal incentives. It is clear that loans, interest subsidy, general repayment tenure, grants and

other tools are commonly used by EU countries to cushion the exposure faced by their nationals in shipping investments. Also, various types of fiscal incentives and tax concessions are adopted by most EU countries in order to make their ship owners more competitive.

ii. Structure of Fleet Expansion: - Although many methods of financing ships and other maritime infrastructure have been developed, they can safely be classified into two: Equity financing and debtor financing. Equity describes the investors funds which are put into a given business venture. In terms of business returns or even failure, he is always the one that gets the last treatment after repayment of various debts. Ship investment is not noted for high returns neither does it ripen quickly for profit. In Nigeria, as in most of the developing world, fleet expansion and investment cannot possibly be so financed.

To complement equity in fleet expansion are the various forms of debt financing structures. There is an increasing reference to mezzanine finance defined as encompassing a broad spectrum of financing that ranks between pure quality or ordinary share and forms of senior debts (loans) which fall within traditional bank lending parameters. Mezzanine finance can utilize either debt instrument or quasi-equity but generally, provides a return much higher than pure debt finance for every high-risk exposure. For long-term funding, the capital market could be relied on, although, this has recorded quite a limited success in shipping.

Other forms of debts financing include legally enforceable loan agreement where the borrower pays the lender interest at predetermined intervals with repayment of principal after a specified period. This form is always supported by accepted forms of security i.e using the ship as collateral as in mortgage, or the cash flow earned by the vessel. In the event there is a time charter income, it can also reinforce the collateral as it guarantees future earnings.

Another form of financing occasionally viewed as alternative to debt finance is leasing. The growth of this instrument in ship financing structure is due to the greater flexibility and financial advantage it offers shipowners when compared with conventional financing structure. The two basic types of leasing in fleet expansion are:

- a. Financial leasing which transfers to the leasee great operational agreement responsibility. The lessor signs the ship purchase contract and is effected by means of a bareboat charter party over an agreed period of lease. This may include a right to purchase the asset at the expiration of the lease.
 - b. Installment sale leasing allows the lessor to purchase and transfer ownership to the ship owner who then makes payments on agreed installments. To secure sale proceeds, the lessor normally takes a mortgage on or place liens against the ship.
- iii. **Sources of Finance:** - Shipping financing was traditionally handled by large banks, which in exchange

for their loans accepted ship mortgage or charter party as collateral. The volatile nature of the ship market has in recent times made ship financing difficult and expensive in an already highly international and competitive environment.

For new ship acquisition, financing has also been done by a combination of credit from the following sources.

- Government loans or guarantees , covering up to 87.5 percent of ship value, in USA for example;
- Government export credits, eg the US facilities to shipyard to improve their competitiveness;
- Supplier credits which may include shipbuilder's loans; and
- Commercial loans against charter and agreements or other acceptable collateral.

In support of ship financing, a number of different financial institutions have risen to provide a range of services including loans directly or in syndication with other bodies, private placement, facilitation bond, equity offering and securitization, fund managers, leasing and risk management services. The major players here include commercial banks, which provide the bulk of debt finance for ship acquisition. Key players include Citibank, DerNorske Bank in Norway, UBS and Midland Barclays. Apart from having dedicated fleet expansion departments, they also facilitate syndication when necessary. The tenor of loan term determines how they can

be financed. Short-term loans have a maximum of five to six years, while they could offer term loans of two to eight years. This area of funding comes handier in financing secondhand building. Generally, loans interest rate is quoted at a margin over LIBOR, usually a spread range from 5/8 percent for an exceptionally strong borrower to 2 percent for a more risky transaction.

Other financial institutions involved in fleet expansion include ship mortgage banks that can arrange a more extended tenor of say 12 years. Loans however do not exceed certain limits, 60 percent in terms of ship value in Germany. For investment and merchant banks, they facilitate funding by arranging and underwriting ship loans. They can also arrange loan syndication, public offering of equity bond issues in capital market and private placement of debts, or equity with financial institution or private investors. Leasing companies specialize in leasing assets and can arrange long term lease of ship. The Japanese relationship with Hong-Kong ship owners in the Shikumi-Sen deal is an example. Under this arrangement, Japanese shipyards and intending charterers were linked with Hong-Kong owners to the benefits of all the three parties.

Shipyards credits schemes are possible because home government offer a number of financial and fiscal supports. These credits are often offered to domestic and foreign owners. Recently the OECD understanding on export credit set limits at 80 percent advance of 8¹/₂ years at eight percent per annum interest. South Korea and China however seem to be excluded from this rule.

iv. Fiscal and Financial Supports: - Fiscal incentives and other financial support from government can go a long way to facilitate fleet expansion. Apart from clear subsidies as in Construction Differential Subsidy (CDS), Operating Differential Subsidy (ODS) and tax incentives as in Capital Construction Fund (CCF), the USA supports solidly its domestic maritime interests. The Federal Shipping Fund (46 App USC 1272 (2000)) of the US declares that:

There is hereby created a Federal Ship Financing Fund (hereinafter referred to as The Fund) which shall be used by the secretary as a revolving fund for the purpose of carrying out the provision of this title. The title deals with ship financing mechanism.

The law also empowers the secretary of transportation to guarantee, and to enter into the commitment to guarantee the payment of interest on and the unpaid balance of the principal of any obligation which is eligible to be guaranteed under this title.

This support is in response to the realization that shipping is of an enormous economic, social and strategic importance and that it is difficult to develop without government aid. In a situation where a nation maintains an absolute liberal attitude, it is most likely that its nationals in shipping would be facing some sort of unfair competition. This arises from the fact that the playing field is different from the competitions given the presence or absence of home government assistance to their respective shipping interest. This also underscored the

deliberate strategy and significance of shipyard support scheme almost universally adopted by maritime states (*Asoluka 2003, PP.235-239*).

One point, however, is that any forms of assistance must take into account a deep knowledge of the real problems faced by the operators. Solution package should then be designed to strengthen competitiveness, as opposed to supporting inefficiency and incompetence. Support based on patronage cannot lead to growths, and so, can not be sustained. Therefore, it should be discouraged.

In the United States of America, the nature of guarantee is broad, covering ship acquisition, export vessels, reconstruction or reconditioning of vessels or fishery facilities, construction and reconstruction or reconditioning of commercial demonstration, Ocean Thermal Energy Conversion Facility or Plant Ship. The area of shipyard modernization and improvement for advanced shipbuilding technology of a general shipyard facility located in the USA is adequately included in the title XI of the Merchant Marine Act, 1936, of USA.

One interesting feature is that, the fund is clearly established with a coverage and scope wide enough to accommodate both domestic activities and international shipping and allied activities. For details on procedure, it provides an outstanding limit not exceeding \$12,000,000,000 as long as;

- i. \$850,000,000 shall be guarantees of obligations for fishing vessels and fishery facilities made under this title, and
- ii. \$3,000,000,000 shall be limited to obligations pertaining to guarantee of obligations for eligible export vessels.

For the amount of guarantee, “the Secretary shall not guarantee the principal of obligations in an amount in excess of 75 percent, or 87¹/₂ as it is applicable under the title. The security interest may include a mortgage or mortgages on a vessel or vessels, as the Secretary may reasonably require protecting the interest of the United States.”

va Ship Financing in Nigeria: Banking service: - The difficulties in shipping in terms of financing and management in an emergent maritime nation like Nigeria are legion. The crewing and operational issues apart, the problem of finding finances and funds to invest in the sector is not easy to overcome. Going by recent events in the industry together with unfulfilled promises, the prospects of handy solution in the near future are challenges that require concerted and dogged efforts.

The general peculiarities of shipping are not quite known by the Nigeria financial sector. Hence, here is one investment that calls for large capital outlay. Its assets are quite mobile and demand constant tracking. Its market (shipping) is quite volatile in asset value and freight rates, all worsened by the fact that information on its activities is quite difficult to find and at times downright misleading.

With little or no track record by Nigerian shipping companies, the chances of their loan requests, on strict financial, commercial credit appraisal, remain weak. Thus, there is little comfort to financiers given the plethora of risks afflicting shipping investment in Nigeria. Such risks include the followings:

Vb Market Risk: The probability that the business will survive and bring value to the asset and make profit is low,

Vc Physical Risk: Given the age, quality and manning of the vessels here, there is a high incidence of accidents. So, the issue here has to do with the safety, loss or damage to vessel, including collision and seizure (recall case of MV Trainer and the Strict Port State Control regime now operating in shipping).

Vd Debtor Risk: Given poor route analysis and feasibility studies, the certainty of freight income casts doubt on whether the borrowers can repay the loan. Again, the recent experience of the suspended SASBF does little to reflect commitment character and capacity of prospective loan beneficiaries.

Ve Currency Risk: Nigerian banks deal in Naira while ships are purchased abroad in Dollars. As the Naira depreciates regularly against the Dollar, a huge exposure arises from any credit granted for income stream/freight that is Naira denominated. This fact gives the little comfort that what may look viable in Naira terms would be insufficient to offset liabilities of operational and financial costs incurred in dollars

Vf Interest Rate Risk: One characteristic of the Nigerian monetary system is the volatility or swings in interest rates. In a situation where the rates gyrate over 50 percent within a short spell, credit granted under a floating interest rate regime, as we have, can spell doom to maritime investment.

Vg Country Risk: Although normalcy seems to have returned with the advent of democracy, this is still a strong factor that can determine the viability, profitability and sustainability of shipping investment.

Vh Managerial Risk: Other studies have noted the ageing seafarers in Nigeria, coping with old vessels. The extent of navigating these “rusty buckets” acquired randomly for the sake of remaining employed cannot induce much confidence. Also, the current economic situation seems to have dried up funds needed to keep qualified seafarer operationally up to date and conversant with safety and environmental standards. This is the risk that can not be assumed as light just because we had in the past produced excellent seafarers. Moreover, successful shipping investment are not just started and concluded with seafarers, the other constituents’ services are equally important.

In the face of all these problems, three pertinent questions arise:

- i. Does Nigerian shipping have a convincing case to warrant funding? This is crucial to the study as emotions alone cannot provide funds. Also it should guide our

solution to the specific question to the NMA to successfully intervene.

- ii. Has the Nigerian banking sector got the financial muscle, experience and commitment to support shipping in Nigeria now? and
- iii. Can other sources including the capital market be called upon to support shipping in Nigeria now?

As it stands now, the NMA has not addressed any of these critical matters. Not only has the statutory instrument not sufficiently addressed the issue of funding, scope and spread of application and modality, the procedure adopted in the erstwhile SASBF failed to seriously look into such matters. For banks, it is quite clear that they did not understand the intricacies of fleet expansion. They were also fundamentally restrained by the nature of their deposits. One standing rule in finance remains that you can not borrow short and lend long. Their deposit is short and at best applied to money market operations and not for long-term needs of the shipping interests. Apart from this fact, the poor track record and non-provision of adequate security could negatively influence the attitude of banks generally. Compounding the matter further, is the unstable macro-economic frame-work with volatile interest and exchange rates. The reality is that the competence of the banking sector in shipping must be reinforced. The banking role needs to be properly aligned to serve the shipping industry in Nigeria within the constraints discussed “supra” (*Asoluka 2003. pp 341-343*).

2.11 CAPACITY OF SHIPPING AND DOCKYARDS IN NIGERIA.

Due to the relevance of the shipyards and dockyards to the indigenous ship expansion and acquisition programme and their importance in the enhancement of indigenous capacity in ship-building and repairs it is imperative to realize that statistics has shown that vessels repaired or constructed by the Nigerdock from 1986 to 2000 were as follows; since 1986, Nigerdock has dry-docked 400, repaired along quay 199 and 28 vessels respectively. This shows that the highest number of the types of vessels it repaired is tankers (97) followed by fishing/shrimp trawlers (76) General cargo/Merchant vessels (25), Naval ships (20) Tugs (20) with only passenger/vehicular ferries, whilst the least number of vessels repaired by it is Gas Tanker (1). This is an indication that the commonest type of vessels is operating and being serviced within the Nigerian Domestic shipping industry which are making use of the repair services of Nigerdock. The position is also an indication of the most and least available cargo since the nature of available cargo attracts the type of vessel to carry it. Crude oil and refined petroleum products, fishing activity and fishes and general cargo services can rightly be taken to be in such a sizeable quantity in Nigeria as to attract the high number of

such vessel being repaired by Nigerdock. It is also clear that the highest number of repaired vessel (36) was recorded in 2001, which was an indication of increased capacity utilization, patronage and performance of Nigerdock in ship repairs, whereas, the lowest number (1) was in 1985. The achievement in completed repairs recorded in 2001 by Nigerdock could be seen as a sign of improved performance from the previous known record of 16 repaired vessels (records in 1998, 1999 and 2000 were not available) and higher patronage and readiness to meet shipowners' repairs demand.

One can still see that, only 28 vessels have been built by Nigerdock since 1986. The first two were built in 1990, the highest number being eight in 1992; while the last two ships were built in 1999. Again the size or gross registered tonnage of the vessels or the duration of their construction are not known but they cannot be big vessels, bearing in mind, the facilities available to Nigerdock. From all indications, it can be seen that, 22 of the 28 vessels are made up of four passenger ferries, four mooring launches, five harbour launches, four water buses and five vehicular ferries. There are no tankers or trawlers or general cargo vessels or tugs among the vessel built by Nigerdock (*Asoluka 2003, p.104*).

At a recent Maritime workshop held in Lagos on "Challenges of Maritime Practice in the New Millennium" organized by the Federal Ministry of Transport in February, 2001 at Le Meriden Eko Hotel Victoria Island Lagos, the Managing Director of Nigerdock Nigeria Limited, Mr. Nkpubre said Nigerdock

Nigeria Ltd had to date built 26 vessels (which are mainly waterways vessels) the highest tonnage of which is 150 tonnes. Although in the past three years the company's facilities had been upgraded to build up to 30,000 gross tonnage vessels comprising mainly tugboats, coastal tankers and supply boats for which there is a potential market in the West and Central African sub-regions. However, he was reported to have admitted that Nigerdock equipment and facilities were fast deteriorating and needed to be re-equipped for better productivity. He also added that, there was a need to develop the technology and culture of building ocean-going vessels like oil tankers tugboats, service boats, trawlers which are essential for effective operation of the cabotage law (*cf. the "Maritime Watch" column of ThisDay Newspaper of Friday, 19th October, 2001 page 27*) (as in Asoluka 2003. p.105).

Presently, Nigerdock's privatization paved way for the acquisition of 51 percent of the shares of the Federal Government in the company by Global Energy/Mc Dormott Consortium at N3.4b. The new ownership structure of the company may affect the policy and focus of the company entirely.

It should be noted from the forestated that, whilst Nigerdock may be able to cope with the repairs of expanded national fleet, consequent upon the introduction of the cabotage, and cargo support programme, it has not shown, from the number and types of vessels it has so far built that it has the capacity and capability to build enough coastal vessels, such as

tanker, trawlers, general cargo vessels, tugs, necessary for the domestic shipping of the available cargoes which would facilitate a coastwise trade, nor meet the demands for the construction of coastal ships to be used in the cabotage trade by indigenous shipping companies. Regrettably questionnaires sent to Nigerdock intended to obtain data on its present capacities in shipbuilding was not responded. Response would have reconciled the differences in Nigerdock performance and capacity. For the failure of the other shipyards or repairs yards to respond to the questionnaires (thereby hiding their shipbuilding and repairs capabilities and activities) it is clear that some of them are no longer operating (*Asoluka; 2003. p.105*).

Daman shipyard, NPA Dockyard Burutu, Central Water Transport Corporation, Burutu were discovered not to be operating anymore. Since their facilities and records are not likely to surpass those of Nigerdock which claims to have the capacity to construct vessels of upon 30,000 deadweight, repair vessels of up to 25,000 deadweight and construct off shore/deepwater platforms, offshore buoys, yokes, piles, mooring systems, jackets, flow lines and risers, a lot of work still has to be done to upgrade their facilities, capabilities, and capacities before Nigerian shipyards can be relied on to build the Nigeria cabotage vessels in sufficient quantities.

The US had nineteen major shipbuilding facilities as at January, 1999 (*MARAD 99, P. 16*) (*as in Asoluka; 2003. p. 106*), whereas, Malaysia has not less than fifty-seven shipbuilders and repairs (*Malaysian Maritime Yearbook*

2000/2001, p. 204-205) as in Asoluka; 2003 p. 105), servicing their coastwise trade needs. No doubt the opportunity to build Nigerian coastal ships preserves shipyards' base which can be used to track shipbuilding capability and activity. However, the capacity and facilities to build the vessels are equally important.

2.11.1 Availability of Cargo; Domestic Tanker Traffic Returns from 1977 to 2001.

The data on domestic tankers traffic returns for the years 1997, 1998, 1999, 2000 and January to September, 2001 shows the lowest number of indigenous tankers involved in the domestic shipping of petroleum products. In April they were five (18 percent) out of the 18 tankers involved whereas, the highest number of indigenous tankers involved in the domestic shipping in November 1997 indigenous carriers were 17 (65 percent) of tankers so involved. However based on the 132 vessels involved in the carriage of petroleum products, the percentage of both the volume of the products which indigenous tanker discharges (77 percent) and loaded (71 percent) in 1997, were higher than the percentage discharged and loaded by foreign tankers. It also shows that 292, 392 and 1,759, 613 metric tons of the cargo were loaded and discharged respectively domestically in 1997.

It can also be seen from statistics that in 1988 there was a fall in the percentage of the total volume of petroleum product lifted by indigenous carriers to 41 percent (747, 973) of the loaded cargo and 14 percent (559, 637) of the discharged

cargo even though more indigenous tankers (180) than foreign ones (169) were involved in the carriage of the cargo. The highest number of indigenous carriers (12 out of 20 or 60 percent) involved in the carriage in 1998 was in March, whilst the lowest number (14 out of 35 or 40 percent) was in October. The total volumes of petroleum products discharged and loaded in 1998 were 559, 635, and 1,841, 733 metric tons respectively.

Statistics shows that even though the number of indigenous tankers involved (169) was higher than the total of foreign tanker involved (152) the percentage of the total cargo discharged (174, 632 out of 468,255 tons, i.e 37 percent) and loaded (76299 out of 2,265,877 metric tons, i.e 34 percent) respectively by indigenous carriers, were lowers than those of foreign tankers. The highest percentage of indigenous carriers involved in the carriage of the cargoes in 1999 was in August, when they were 13 out of 22 (59 percent) and the lowest was recorded in October when they were eight out of 19 (42 percent).

It has been observed that the percentage of the proportion of the total petroleum cargo (2,000,603) in the year 2000 loaded by indigenous carriers (27 percent comprising 535,374) fall, whilst, the percentage of the total cargo discharged by indigenous carriers rose to 56 percent made up of 360,570 out of 648,266 metric tons. The number of indigenous carriers involved in 2000 in the carriage of the cargo (115) was less than the number of foreign tankers involved (137). The returns for the year 2001 is for only nine months and has revealed

that even though more (105) indigenous tankers had taken part, 26 percent of the total loaded cargo was carried by indigenous carriers, whilst foreign tankers carried 74 percent. Even though indigenous carriers carried 75 percent of the total cargo discharged, the total volume discharged (51,411) is quite low compared with previous years or corresponding period in the previous years. Out of the total metric tons of 1,934, 480 loaded, foreign vessels carried 1,441,107 which is a big chunk of the total volume.

The following findings are made from the above analysis of the data on domestic tankers traffic for the years 1997 to 2001;

- i) The volume and traffic of petroleum cargo loaded and discharged and warranting carriage by tankers in the domestic shipping industry is high. They run into about 2million metric tons on the average per annum.
- ii) The business of carrying petroleum and its products in the domestic sector is still being dominated by foreign tankers despite the fact that indigenous shipping companies now have a lot of tankers (going by the repair capabilities of Nigerdock and the number of indigenous vessels involved in the carriage between 1997 and 2001 for instance), and that, this cargo generated within the Nigerian territory. Apart from the year 1997, when indigenous carriers dominated the volume of such cargo loaded, foreign tankers dominated it in 1998, 1999, 2000 and 2001. Indigenous carriage

cannot also be said to be dominating the discharging or carriage of the petroleum products discharged in the domestic markets.

- iii) The trend since 1997 to date of petroleum products being loaded by indigenous carriers has been that of a systematic decline.
- iv) With a less number of tankers than indigenous shipping companies, foreign owned vessels lifted more petroleum products than indigenous shipowners, and so the indigenous shipping companies must have been competing on an un-level playing field with foreign owned ships.
- v) Cabotage policy will prevent foreign vessels from partaking in the whole cargo for Nigerians and enable indigenous shipping companies to be assured of cargo thereby increasing their tonnage for lifting the cargo which foreigners would no longer lift due to the operation of cabotage policy. This will therefore, perfectly fit into the cargo support programme of the management of the NMA.

2.11.2 Domestic Waterborne Petroleum Products.

From chief Chris Asoluka and Co's findings from the staff of the pipelines and Products Marketing Company Limited (PPMC), a subsidiary of the Nigerian National Petroleum Corporation, are as follows:-

- PPMC is not involved in the shipment of crude oil on the Nigerian Coast, but is involved in the coastal shipment (which is a lot) of refined petroleum products such as Diesel Purpose Kerosene (DPK) which includes kerosene and jet fuel, Automotive Gas Oil (AGO) that is to say, Diesel, Premium Motor Spirit (PM or Petrol) Liquefied Premium Gas (LPG) or cooking gas all of which are clean products, and fuel oil which is one of the dirty products.
- The Crude Oil Division of NNPC in Abuja handles the shipment of the share of the Federal Government based on production sharing agreement with its oil exploration joint ventures, whereas the latter oil companies individually handle the carriage of their shares of the crude oil.
- The Supply of Crude oil to all the Nigerian refineries for refining into other products is by pipelines and only the Kaduna refinery refines imported crude oil which is transported through Escravos and Warri to Kaduna in addition to Nigerian crude oil whilst the rest refine only Nigerian crude oil. The main domestic coastal traffic for shipments of petroleum products are the Warri/Port-Harcourt to Lagos and Calabar to Warri to Port-Harcourt, vice versa, whereas imported refined products are also brought into Lagos from the ship at sea, through lighterage.
- About 80 percent of the coastal vessels involved in the transportation of refined petroleum products are owned by

Nigerian operators. The Nigerian operators involved in such shipment acquire their vessels on charter from foreigners and sometimes under commission arrangement. Many Nigerian operators are more interested in the commission earned than in developing the shipping industry. Their vessels are very old and usually not seaworthy.

- The NNPC has only two tankers MT TUMA (1985 with deadweight of 136,000 MT, it can store up to 100 million liters of refined products) which is used for the storage of refined products and MT Oloibiri (1978) which has a deadweight of 276,000 MT, it can store about 1.6 million barrels of crude oil) MT Oloibiri is said to be presently on bareboat charter to Texaco Overseas at Pennington, whilst MT TUMA now receives AGO from import vessels and also transports same into smaller vessel for distribution on the coast. So, the NNPC/PPMC relies on either time charters for usually an initial period of two years subject to renewal from five to seven years, or on contract of affreightment, or volume charter where the tanker is guaranteed three shipments per month or payment in lieu in the event of non availability of products for shipment. As contained on pages 5-6 of the paper, "Supply of products/chemical Tankers and Tugboats to NNPC" the average gross rate per day payable by the NNPC/PPMC for time chartering vessels of different sizes for coastal movement of refined products, is as follows: US\$11,111.11 US\$13,333.33 for Gas carriers of size

1,500 -2,500Mt; US\$9,444.44 US\$10,556.56 for products tankers of 800-10,000mt and US \$15,556.56-US\$17,222.22 for product tankers of size 20,000-30,000mt; whereas for volume charter in respect of which three voyages are guaranteed a vessel per month, the going market rate is between US \$10 and –US \$12 per metric ton and US \$ 70-85 per ton for gas carriers. The paper also estimates that NNPC/PPMC will need at least one gas carrier of 1,500 to 2,500mt, three or four product tankers of 8,000 to 10,000 and two product carriers of between 20,000 and 30,000.

- The shortfall in refined products from the refineries and the non-availability of product for the vessels to carry led to the under-utilization of the coastal tankers used by the NNPC/PPMC for coastal shipments. The number of coastal tankers employed by the NNPC/PPMC has been reduced from 20 to nine presently, six of which are on contract of affreightment while the other three are on time charter. However, its hiring of vessels is based on advertised biddings showing the required number, size, and type vessels. Vessels to be used in Warri and Calabar must be flat-bottomed in view of the drafts of the ports while fuel oil shuttles must be fitted with heating oil. As a result of vandalizing of pipelines which has affected the movement of refined products especially the port-Harcourt, Abia, Enugu, Auchi, and Benin axis and the Warri Benin, Ore, and Shagamu axis, it is expected that pipelines would not be able to handle the expected

increased supply of refined products when the rehabilitation work on the refineries are completed and operate at optimum capacity. So, coastal tankers would still have to be heavily relied upon for the movement of petroleum products to the South West which consumes 40 percent to 50 percent of the refined products nationally.

Even when the pipelines are fully functional, 60% of the suppliers of petroleum products to the South West is by coastal vessels through Lagos jetties. It is important to realize that, the volume of deliveries to Lagos jetties between 1994 and 1998 from which it was been concluded that six vessels would be needed to deliver petroleum product to the Lagos area every month.

- Consequentially, the inability of the NPA to adequately furnish tug services to the NNPC/PPMC in order to ensure the prompt berthing and sailing of the vessels hired by it the NNPC/PPMC now hires tugboats, which are already four in number for these purposes. Three of the tugboats are in Lagos area to take care of the increased activities due to ship-to-ship operations in Lagos while the remaining one is working at the Okrika jetty (*Asoluka; 2003 p.111*).

2.11.3 Domestic Waterborne Transportation of Gas (LNG)

The Nigeria LNG limited was granted certain guarantees, incentives etc. by the Federal Government under a Decree in 1993 in order to encourage the huge investment in the tapping

of Nigeria's Liquefied natural gas which was being wasted through flaring. Even though in the letter dated 27th November 2001 written in response to the consultants questionnaire the company claimed not to be involved in the carriage of gas domestically but internationally and not to be governed by the national shipping policy Act, it is submitted that the company has enjoyed enough incentives, guarantees and protection which should now be withdrawn. Recently, a national newspaper reported the arrangements the company had been making to ship gas domestically. This information is worth investigating. In the regime of cabotage, there is no cargo shipped domestically that indigenous shipping companies are the ones that the carriage of all cargo generated domestically are reserved for in a true cabotage regime.

In Malaysia for instance, Malaysian tonnage dominates the carriage of LNG from LNG plants in Bintulu, Sawarak to various consuming markets with a fleet of 13 vessels which is acclaimed to be the single largest owned, managed and operated fleet by a shipping company (Malaysian International Shipping Company (MISC) in the world. Malaysia has a strong presence in LNG shipping in the international trade. There is no reason why Nigeria which is equally a gas-rich and gas producing country should not involve its national fleet in the carriage of LNG both domestically and internationally. If the Nigerian shipping companies lack the gas tankers needed for its carriage, the government and its agencies should empower them to do so.

Observing from the aforementioned therefore, using cabotage policy by NMA's management to achieve national cargo support and indigenous vessel expansion and acquisition programmes is defensible, viable, sustainable, and so, should be pursued without further delay. To further justify the above conclusion, it is necessary to refer to the statement recently made by Clyde J. Hart Jr. as US Maritime Administrator, to the students of the US Merchant Marine Academy (Kings Point) on the Jones Act. He said:

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 a 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 on 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 (Asoluka, 2003, PP.120 – 121).

2.12 THE NATIONAL SHIPPING POLICY ACT;

Introduction:

The legal framework for the achievement of the statutory objectives and the exercise of the statutory functions of the National Maritime Authority have already been set out in the National Shipping Policy Act (Cap. 279 Laws of the Federation of Nigeria, 1990), which also created the Authority, (Cf. sections 1(1) and 1(3).

One of the most important functions of the NMA is to co-ordinate the implementation of The National Shipping Policy as may be formulated from time to time by the Federal Government (Cf. Section 4(a)). The National Shipping Policy ought to include the cabotage policy or the cabotage Act. It is an enormous function which the makers of the National Shipping Policy Act intended to enable the NMA supervise, organise, direct, manage or harmonise the implementation of the National Shipping Policy formulated by the Federal Government.

In their paper, John Corkery, Anthony Land and Jean Bossuyt identified seven stages in the policy formulation process

namely, identification of policy issue, specification of objectives, development of options, choice of preferred options, policy decision making, design of implementation strategy and policy review and implementation strategies. Chrzanowski in his book on maritime economics stated that:

“National Shipping Policy, an element of overall economic policy, expresses the attitude of the State to shipping. Shipping policy can be understood as the totality of economic, legal and administrative measures by means of which the State influences the position of its national fleet, that is, its place and role in the national economy and in international freight markets”.

The attitude of the State to its own merchant marine, as a rule, reflects indirectly its attitude to the fleets of other countries' shipping policy, then has two aspects: foreign, expressing the attitude to other fleets; and domestic, to own merchant marine. In another paper, it was shown that “Shipping Policy” could be interpreted in a wide sense to cover the entire maritime sector or in a narrow sense to cover trade and service related to shipping policies and that, even if interpreted narrowly, a shipping policy cannot be developed in isolation but must take into account policies being developed at ports, infrastructure and ancillary services, road and rail transport and related industry sectors. A comprehensive maritime policy which government should formulate should therefore include ports infrastructure, maritime services, and comprehensive shipping services for trade, development of

national shipping capabilities, safety of life and protection of maritime environment, and human resources development.

For instance the Malaysian shipping policy focuses on two main issues: Fleet expansion and Port development. The aim of fleet expansion is to reduce dependence on foreign vessels for the shipment of Malaysian cargo and minimize the economic vulnerability caused by over-dependence on foreign fleets for carriage of cargo. The goals of its port development is to make its ports transshipment hubs for South East Asia, encouraging local shippers to ship through national ports to prevent capital flight and ensure growth of other maritime related services such as shipbuilding, ship handling, banking and insurance. The objectives of the Indian shipping policy since independence have been to safeguard the importation of essential supplies for the national economy, to reserve 100 percent of coastal trade for national flag vessels, to ensure adequate provision of shipping services to meet the needs of national trade, to improve the balance of payments position through import substitution and export of shipping services; and to develop merchant fleet to act as a second line of defence to protect India's maritime interest and preserve its channels of communication.

2.12.1 Statutory Objectives of NMA on Cargo Support and Indigenous Vessels Expansion and Acquisition

There are certain provisions of the NMA Act that give directions on the nature of cargo support and indigenous

vessels expansion and acquisition programme to be applied and executed by the NMA. They are as follows:

It shall be the objective of the Authority to:

- a. Correct any imbalance in the Nigerian shipping trade for the purpose of implementing the provision of the UNCTAD code of conduct for Liner Conference, especially to observe the ratio of 40:40:20 in respect of carriage of goods to Nigerian ports;
- b. Improve Nigeria's balance of payment position by enhancing the earning and conservation of foreign exchange from the shipping industry.
- c. Ensure the greater participation of indigenous shipping lines in liner conferences thereby influencing the decision making processes of such liner conference servicing the Nigerian international sea-borne trade.
- d. Promote the acquisition of shipping technology by creating and diversifying employment opportunities in the shipping industry, through the stimulation and protection of indigenous shipping companies.
- e. Increase the participation by indigenous Nigerian shipping lines in ocean shipping through the application of the provision of the UNCTAD code on General Cargo and by entering into bilateral agreements or other suitable agreements.

- f. Encourage the increase of ownership of ships and the achievement of indigenous skills in maritime transport technology.
- g. Achieve a systematic control of the mechanics of sea transportation.
- h. Promote the training of Nigerians in marine transport technology and as seafarers (*cf. section 3) as in Asoluka; 2003 p.124*).

Even though, in achieving its statutory objectives of implementing the UNCTAD code of conduct for liner conference and increasing participation of indigenous Nigerian shipping lines in ocean shipping through the provision of the UNCTAD Code on General Cargo, the NMA would be offering Cargo Support to indigenous Nigerian shipping lines or companies. The ratio of 40:40:20 in sections 3(a) of the Act applies in the realm of international deep-sea shipping; and increased participation of indigenous Nigerian shipping lines in ocean shipping is envisaged in section 3(h) (*cf* also section 4(a) of cap.297). Coastal and inland waterways transportation which cabotage is concerned with, are excluded in the scheme of cargo support programme or the objectives envisaged by the makers of the Act to be achieved by the NMA. This is inspite of the fact that one of the special functions of the authority is the investigation, determination and keeping of the records of inland water transportation including their relation to the transportation by land and air (*cf.* section 5(j) of cap 279). Therefore, the Act has no direct and

exact cargo support objectives to be achieved by the NMA in respect of cabotage services or policy.

Furthermore, even though the provisions of the Act on cargo sharing (Cf. Sections 18 and 19 of cap. 279) and cargo reservation (Cf. Section 14) are for only shipping companies with national carriers status in foreign trade and not in respect of coastal and inland water trading, the Act has not excluded foreign ships from coastal and inland water trade as required in a cabotage regime and as such the Act is not very helpful in the implementation of a true cabotage regime in Nigeria through the NMA.

However, in respect of indigenous vessels expansion and acquisition programme, the Act contains provision that will indirectly and directly achieve the objectives of the NMA.

Pursuant to section 3 (i) of the Act, NMA's objective of encouraging increased ownership of ships and acquisition of skills in maritime transport technology without limitation to only sea-going vessels, provides it with the needed basis for cabotage vessels expansion and acquisition programme. By encouraging such a vessel's expansion and acquisition programme, the NMA will indirectly be improving Nigeria's balance of payments position while enhancing the earning and conservation of foreign exchange generated through the shipping industry (Cf. Section 3 (b) of cap. 279). This is because, cabotage vessels would be built and or repaired in Nigeria instead of being purchased or repaired abroad in hard currency which depletes the nation's foreign reserves and

induces balance of payments problems. Freights and insurance premiums earned by foreign ship owners and insurers would also be earned by Nigerian tonnage that would lift the cargo internationally as well as our local insurers. Moreover, through cabotage policy, the NMA could achieve its objective of a systematic control of the mechanics of sea transaction (Cf. Section 3 (i) of Act) as a result of the experience and control gathered from coastwise trading.

NMA's indigenous maritime capacity enhancement can stand on its statutory objectives of promoting the acquisition of shipping technology through the stimulation and protection of indigenous shipping companies and the promotion of the training of Nigerians in maritime transport technology and as seafarers (Cf. Section 3 (c) and 3 (k) of the Act). *As in Asoluka, 2003 P.125)*

One of NMA's functions is stated to be the supporting of indigenous companies in fleet expansion and ownership (section 4 (c) which includes those in coastwise and inland water trade. When it comes to lifting cargo or cargo support, NMA's function of ensuring the carrying of at least 40 percent of the freight in revenue and volume of the total trade, relates only to shipping companies with Nigerian "national carriers' status", which are involved in international sea-borne trade (section 4b), thereby excluding cabotage trade or domestic waterborne transportation. So, it is clear that the Act gives the NMA the function of supporting indigenous vessels that are involved in deep-sea shipping and owned by shipping companies conferred with "national carrier status" in the area

of availability and provision of cargo to be carried, thereby excluding cabotage vessels or cabotage shipping companies. But, in the area of indigenous maritime capacity enhancement and ship expansion and acquisition, the Act makes room for the vessels and shipping companies (whether or not national carriers), engaged in both deep – sea shipping and domestic waterborne transportation to be assisted by the NMA. Since national carrier ships are to operate on the deep – sea and not on the Nigerian coasts or inland waterways which cabotage laws deal with, the provisions of the Act are inadequate for a true cabotage regime.

In the light of this defect of the Act, it is obvious that the omnibus section 4(g) of the Act was put there by the framers of the Act to fill gaps as related to NMA'S performance of its statutory function.

Section 4(g) of the Act provides as follows.

The function(s) of the Authority shall be to perform such other functions as may be required to achieve the aims and objects of this Act or any national shipping policy as may be formulated by the Federal Government pursuant to this Act.

The above section has two alternate legs. The first allows the NMA to perform functions other than those in section 4 subsection (a-f) of the Act, which are for the purpose of achieving, not just the aims and objectives of the Act as stated in section 2 of the Act, but also for achieving the aims and objectives of the Act as a whole. The second allows the NMA

to perform any function other than those in section 4 subsection (a-f) which are for the purpose of achieving any national shipping policy formulated by the Federal Government pursuant to the Act.

Therefore, pursuant to section, 4(g), any of the functions of the NMA in the Act that gives cargo support to indigenous shipping companies, or any national shipping guideline on cargo support for indigenous shipping companies in domestic waterborne transportation by way of the cabotage principle formulated by the Federal Government could be performed by the NMA as part of the Authority's statutory functions. So, under, and by virtue of the omnibus section 4 (g) of the Act, the seeming lacuna in NMA's statutory means of achieving cargo support for indigenous shipping companies in domestic waterborne transportation, can be appropriately filled.

Moreover, the term "national carrier" in the Act is difficult to interpret because on the one hand "national carrier status" may be granted to a shipping company that meets certain conditions in which case, it is a reference to a shipping company, (cf. section 7(c) of the National Shipping Policy Act, and on the other hand it is a reference to certain vessels (cf. section 12(1) and (2). Another problematic area for cabotage is section 7(b) and (d) which state: The Authority may grant national carrier status to a shipping company if:

The vessels owned by the company operate on the deepsea and not on the Nigerian coastal or in-land waters; and

The company owns at least one ocean-going vessel of not less than 5,000 net registered tonnages.

Since “the” is a definite article (according to Asoluka, 2003 p. 127), its effect is that all the vessels of the shipping company concerned must be operating in deep sea and not domestic waters, thereby disqualifying vessels in their fleet from being conferred with a national carrier status. Vessels of at least 5000GRT are already outside the non-conventional vessels usually used in coastal waters. The costs of their purchase meet IMO's regulations but may be burdensome, if not too high, for an indigenous shipping company to bear. However, because “may” and not mandatory “shall” has been used by the legislation in section 7, the NMA can still grant national carrier status to a shipping company which has vessels operating in both deep sea and coastal and inland waters or those not meeting all the conditions in section 7. But since “may” is also sometimes interpreted as mandatory if it is so construed in section 7, a “national carrier status” may not be granted to a shipping company which has vessels operating in both deep sea and coastal and inland water and not meeting all the condition in section, 7.

Besides, even though the Act stipulates that all “national carrier” vessels and other Nigerian-flagged ships shall be serviced, repaired and maintained where practicable in Nigeria (cf. section 12(1) and 2) it does not go far enough as required in a true cabotage policy to provide that all other non-national carrier Nigerian-ships shall be built in Nigerian (provided there is that capability) and/or owned by Nigerians.

Equally, an anti-cargo support for cabotage shipping companies and against the use of cabotage policy by the NMA for its cargo support programme in the Act is that, in regulating the bulk dry and wet cargo to be reserved and shared and the shipping companies to be allocated the said cargo, the Act limits it to cargo meant for international deep sea shipping, the carriage of which is to be by only the shipping companies with national carrier status. Section 8(2) of the Act states:

Nigerian operators wishing to charter vessels shall make national carriers operating national flag vessels their fleet choice and consider other vessels only when vessels are not available as stipulated in subsection (1) of this section.

This is another cargo support for national carrier. Since some of the conditions for a shipping company's qualification for national carrier status is that the vessel owned by it operate on the deep sea and not on the Nigerian coastal or inland waterways and that it owns at least one ocean-going vessel of not less than 5000 net registered tonnage (cf. section 7(b) and (d)), a shipping company operating on the Nigerian coastal or inland waterways (which is what cabotage is all about) appears to be excluded from being granted the national carrier status. National carriers are thus given an edge over non-national carriers in the procurement of cargo by their vessels.

In addition, the Act provides in section 9 as follows:

- (i) Subject to subsection (2) of this section and in addition to cargo as defined under the UNCTAD code of conduct for liner conference, national carrier shall have the right to participate in the carriage of bulk cargo (dry or wet)
- (ii) The participation of national carriers in the carriage of bulk cargo to and from Nigeria shall be subject to carriage right of not less than 50 percent of such cargoes
- (iii) All other cargo to and from Nigeria outside the jurisdiction of liner conference shall be subject to the same principle of cargo sharing as stipulated in subsection (2) of this section and subject to such expectations as the Federal Government may from time to time determine.
- (iv) Cargo sharing shall cover the totality of available trade including bulk-dry and wet cargo and shall not be lifted to the UNCTAD 40:40:20 formulas.
- (v) Ships owned or hired by Nigerian national carriers shall carry at least 50 percent of the cargoes generated through technical assistance or international aid.
- (vi) The Authority shall determine ways and means of involving national carriers in the carriage of crude petroleum in Nigerian vessel.

Viewing it from the above presentation since the indigenous shipping companies engage in domestic shipping and can not

be granted the Nigerian national carrier status, the NMA cannot involve them in the carriage of “crude petroleum” as national carrier from one port to another in Nigeria in spite of the lucrative nature of such business and the availability of such cargo. However, it is arguable that, since it is only the carriage of crude petroleum that the NMA is mandated to determine ways and means of involving national carriers, refined petroleum products which are equally available for carriage in coastwise trade are part of the cargoes the NMA shall determine ways and means of carrying. So, whilst only the Nigerian- flagged vessels of national carriers status can be involved by the NMA in the carriage of crude petroleum on the basis of regulations made by the NMA, Nigerian shipping companies which are involved in coastal shipping are free to involve themselves in the carriage in Nigerian vessels of refined petroleum products under agreement reached with the NNPC/PPMC, without any regulation, hindrance or intervention by the NMA on ways and means of such carriage.

Another drawback in the provision of the Act with respect to cargo support programme of the NMA on and for cabotage, is that pursuant to section 3 (f) of the Act, the NMA has a statutory intention and purpose to “assist in the economic integration” of the West African sub region.” It has been observed exhaustively that the establishment of a Nigerian cabotage would threaten the take-off and hinder the implementation of a Nigerian cabotage policy. Therefore, should the NMA start assisting the establishment of West African regional economic integration through the regional

cabotage principle in line with the Act, the NMA would be working against all that maritime cabotage could do for indigenous shipping in terms of cargo support and ship acquisition and expansion.

It is quite true that the Federal Minister of Transport is empowered by section 27 of the Act to make regulations for the effective implementation of the Act; such regulations cannot properly be made to fill gaps in the Act. They can only be correct if they will facilitate the advancement and effective implementation of what is already provided for in the Act.

Moreover, the use of the Act by the NMA to coordinate the implementation of the national shipping policy formulated by the Federal Government is hampered by the Nigerian National Petroleum Act (Cap. 320 Laws of the federation of Nigerian, 1990), and the Nigerian LNG (Fiscal Incentives, Guarantees and Assurance) Amendment Act No.113 of 1993 which was passed in favour of the Nigerian LNG Ltd in order to induce a speedy completion of the Nigerian LNG project. Section 5(1) (d) of cap 320 provides as follows: "Subject to the provision of this Act the corporation shall be charged with the duty of:

(d) providing and operating pipeline, tank ships or other facilities for the carriage or conveyance of crude oil, natural gas and their product and derivatives water and other liquids or commodities related to the corporation's operation."

If the NNPC performs its statutory duty by providing and operating its own tank ships (rather than chartering such vessel from indigenous shipping companies and other foreign ship owners as is presently the case), there will not be any such cargo available for carriage in our domestic water by indigenous shipping companies.

Furthermore, by virtue of section 4 of the petroleum Act 1990, the Minister of Petroleum shall grant a license to any person before he could import, store, sell or distribute any petroleum products in Nigeria. The said Minister is also entitled to make regulations relating to the importation, hardly storage and distribution of petroleum products, petroleum and other inflammable oils and liquids (Cf. section 9 (1) (e)). The distribution of petroleum products in Nigeria as already revealed through data got from the NNPC/PPMC involves carriage of such cargo by tanker vessels along the Nigerian coasts. Being a part of cabotage trade, there is a need for the harmonization of the laws in order to prevent conflicts.

Section 2 (b) Act 113 of 1993 provides that, section 6 of the principal Decree is amended by inserting immediately after the existing subsection (9) a new subsection (10) as follows:

The provision of the National Shipping Policy Decree 1987, as amended the regulations made there under shall not be applicable to the company, its contractors sub-contractors customers or shipping company referred to in subsection (8) of this section.

Consequently, none of its objectives, functions or power under Cap 297 can be applied or exercised in respect of the Nigerian LNG Ltd (even though it is a limited liability company incorporated under the laws of Nigeria) or its shipping company. In particular the NMA cannot take into consideration in the application of its cargo support programme, or Cargo Control and Allocation Programme, Nigeria LNG Ltd or the LNG it produces or any shipping company owned by Nigerian LNG Ltd, nor even obtain data from it or its contractors for purposes of research, development and the planning even though the company, its shipping and vessel operate within Nigerian ports and territorial waters and the company produces LNG cargo that indigenous shipping companies ought to be carrying.

The danger in this to national security, economic growth, political independence especially where there is no stated duration for the exemption of the company from the Act, is that it runs counter to national commercial and shipping interest. A lot is also being lost by the nation in terms of freight, insurance premiums and the two percent of the shipping companies' earnings accruable to the Federal Government as required by section 17 of cap 279 (*Asoluka, 2003 pp.130-131*).

2.12.2 The Role of NMA in Respect of Cabotage Under the Coastal and Inland Shipping (Cabotage) Bill 2001.

There is a pending bill before the national assembly on the Nigerian cabotage policy known as "coastal and inland

shipping (cabotage) bill 2001” hereinafter called “cabotage bill”. However, with due respect to the drafters, apart from the many typographical errors and the inelegant drafting of certain provisions of the cabotage bill, it is here submitted that the bill is inadequate, inconsistent and problematic in the following respects (*Asoluka; 2003 p.131*).

Notwithstanding the objectives and functions of the NMA, especially as the coordinators of the implementation of the national shipping policy as formulated by the Federal Government from time to time and all the support which the NMA had been giving to the promulgation of the Nigerian cabotage law, there is no specific role given to the NMA under the cabotage bill. This seems to be a serious oversight on the part of the lawmakers or sponsors of the Bill and hence needs to be corrected before it is passed into law. (*Asoluka, 2003 p.130*)

Moreover, a part of the statutory functions of the NMA under the national shipping policy Acts that is to say, the Ship Acquisition and Ship Building Fund (ASSBF) and its administration (section 13 of cap. 279), which states among other things “to assist Nigerians in the development and expansion of a national fleet” appears to have been taken away from the NMA with the creation of a Cabotage Vessel Financing Fund under the Cabotage Bill for the purpose of promoting “the development of indigenous ship owning capacity by providing financial assistance to Nigerian operators in the domestic coastal shipping” (section 29 of coastal and inland shipping (cabotage) bill 2001). Even

though the SASBF is meant for all Nigerians engaged in shipping and the cabtage vessels financing fund is to assist only Nigerians engaged in domestic coastal shipping basis for conflict and avoidable duplication of efforts between the NMA, which is already administering the Ship Acquisition and Ship Building Fund under the National Shipping Policy Act and already had a structure in place for it. It should also be borne in mind that even though the Ship Acquisition and Ship Building Fund was suspended until re-organized, it was not abrogated and so, the legal basis for its administration by the NMA still exists in our statute books.

There are many powers to be exercised and duties to be performed by the Federal Minister of Transport in the implementation of the requirements of the Cabotage Bill.

The Minister may by an instrument delegate any of his powers, duties or functions under the Act to any person to be exercised or performed by such a person, as the case may be, and, if so exercised or performed, shall be deemed to have been exercised by the Minister, although the Minister may also revoke the delegation.

It is reasonable to belief that “any person” is intended to be either an artificial or a natural person. The delegation of the Ministerial Powers, should, however, be to an artificial person with power of perpetual succession so as to avoid the unnecessary bottlenecks that may arise should an individual delegate become indisposed or dies or is not within reach for

whatsoever reason since a delegated power cannot be redelegated under the doctrine of “delegatus non potest delegare”. Because of the problem of continuity and in order to avoid time consuming and distracting struggles amongst government agencies or officers (over whom the powers/duties of the Minister shall be delegated), it is necessary for the Cabotage Act to be specific and clear as to who or which parastatal or agency the Minister’s powers and duties shall be delegated in view of the function of the NMA as the coordinator of the National Shipping Policy as formulated by the Federal Government of Nigeria from time to time. NMA’s facilities and necessary funding and manpower to implement the Cabotage Act and in line with the procedure in Malaysia, (where the Domestic Shipping and Licensing Board is in charge of the Licensing of Cabotage vessels, as distinct from the registration of vessels) the Minister’s powers should rightly be delegated to the NMA. Though the Minister is to create and maintain in the office of the Registrar of ships, a separate register for Cabotage vessels (section 18 of the Coastal and Inland Shipping (Cabotage Bill) 2001), it does not follow that his powers and duties should be delegated to any other person other than NMA.

This is because the licensing of Cabotage ships is totally different from the registration of (Cabotage) vessels. The Registrar of ships first registers a vessel as a Nigerian vessel, and thereafter its owners must meet other requirements in the Cabotage Act before the vessel can qualify to be licensed by

an organization like the NMA to participate in Coastal and Inland Water Shipping.

Another worrisome provision of the Cabotage Bill is its section 36 which provides as follows:-

All of the provisions of the Merchant Shipping Act and other relevant legislations and regulations that is (Sic) in force immediately before the commencement of this Act shall, so far as it is (Sic) consistent with this Act, continue to be in force.

It is submitted that, one of the effects of this provision is that, the National Shipping Policy Act being legislation relevant to the Cabotage Bill and in force before the commencement of the Bill, so far as it is inconsistent with the Cabotage Bill, shall not continue to be in force.

Finally, the provision of section 4 of the Cabotage Bill is impracticable for now, considering the inability of Nigerian ship building and ship repair yards sector to build sufficient coastal vessels to meet the expected increased demands for coastal vessels to take care of Cargo Support and the excess cargo that would be available due to the restriction of foreign vessels from the Cabotage. The Bill's section 4 provides:

No vessel other than vessels owned and manned by Nigerian Citizen(s), built and registered in Nigeria shall engage in the domestic coastal carriage of cargo within the coastal, territorial,

inland waters or any point within the waters of the Exclusive Economic Zone of Nigeria.

This section imposes a strict Cabotage Policy on Nigeria and this means that vessels not built in Nigeria but owned by indigenous shipping companies will not qualify or be qualified to be registered or licensed to participate in Cabotage Trade. However, unlike other countries such as the US and Greece, where strict Cabotage Policies are in place, the Shipbuilding industry in Nigeria has not shown capacity/capability to build Cabotage vessels, to satisfy the expected high demand upon the promulgation of the Cabotage Act. The requirement in section 4 for Nigerian Cabotage vessels to be built in Nigeria is also inconsistent with section 6 and 15 of the Cabotage Bill which did not insist on vessels qualifying for registration for Cabotage being built in Nigeria. Section 8, thereof, under certain conditions, allows foreign participation in the Nigerian Cabotage.

Even though the Cabotage Bill makes transitional provisions in section 33 which, “inter alia”, states that its provisions shall be enforceable from the first anniversary of the day on which it comes into force, (which period may be extended by the Minister of Transport), a period of one year or less than five to ten years may not be enough for Nigerian Shipping/ Shipyards to build enough capacity to construct and deliver vessels that will qualify for registration to participate in domestic water borne trade. According to section 13, the Minister may, on an application to him, waive the condition that a vessel taking part in Nigerian Cabotage must be built in Nigeria, if he is

satisfied that no Nigerian shipbuilding company has the capacity to build the type and size stated in the application. However, it is better if the Nigerian shipbuilding company confirms in writing to the Minister that it has no capacity to build such a vessel.

2.12.3 Lack of Proper Legal Framework for Cabotage Policy

Going by the paper presented at the Public Hearing on the Cabotage Bill, organised by the House Committee on Transport at the National Assembly Complex Abuja in April 2001, the researcher intends to represent a situation report on the Nigerian Shipping laws, relevant to the implementation of a time Cabotage regime, (*as produced by Asoluka; 2003 P.134 ff*).

The greatest problem to cabotage or its beneficial implementation in Nigeria is the absence or lack of a proper legal framework and as at the time, inadequate legal regime for its appropriate regulation and implementation as can be seen hereunder.

(a) Merchant Shipping Act:

Section 291 of the Merchant Shipping Act (MSA) states:

1. *Whenever a ship is owned wholly by persons qualified to own a registered Nigerian ship, that ship shall be registered either in Nigeria in the manner provided in this Act or in some*

other commonwealth country in accordance with the law of that country unless-

- i. The ship is recognized by the law of a commonwealth country other than Nigeria as a ship of that country and is by law of that country exempted from registration; or*
 - ii. the ship is, pursuant to subsections (2) of this section exempted from registration under this Act.*
- 2. Ships not exceeding fifteen tons employed solely on the coasts or inland waters of Nigeria may, if the Minister thinks fit, by notice in the Federal Gazette be generally or specially exempted from registration under this Act.*
 - 3. If any ship, other than Nigerian Licensed Ship, does not comply with the requirements of subsection 1 of this section, that ship shall be recognized as a Nigerian Ship.*

Section 290 of the MSA provides that a ship shall not be registered in Nigeria under the MSA unless she is owned wholly by “persons qualified to own a registered Nigerian ship” namely; commonwealth citizens and corporate bodies established under and subject to the law of a commonwealth country, and has its principal place of business in a

commonwealth country, and has its principal place of business in a commonwealth country and empowers the Minister of Transport to make rules for the manner of registering Nigerian ships under the Act.

The above provisions show that the Nigerian ship register is partially open since qualification of a ship for registration in Nigeria is not exclusively dependent on the owner having a close and significant connection with Nigeria but extends to his connection with any other commonwealth country. The implication is that, ships owned by non-Nigerian (foreign) citizens and companies of the British Commonwealth can be registered as Nigerian ships and as such fly Nigerian flags and be entitled to all the protections, benefits and privileges of a Nigerian ship (*of section 346, MSA*) (*as in Asoluka; 2003 P. 135*). They will also qualify to participate in Coastal Trade as Nigerian flag or Nigerian owned ships, even though, they are not owned by Nigerian – British Commonwealth but non-Nigerian British Commonwealth, citizens and/or companies. Other provisions of the MSA which relates to regulated Cabotage Policy, that is, coastwise trading with ships built or owned crewed and operated by Nigerians are also considered.

In its section 5, the MSA provides as follows:-

- i. No ship shall trade in or from waters of Nigeria unless the ship:-
 - a. is a Nigerian ship; or

- b. is a Commonwealth ship; or
- c. is provided with a certificate of foreign registry or other documents similar or equivalent to that required by this Act.

The MSA limits the maximum age of any non-Nigerian ship that wants to trade in or from Nigerian waters to 15 years from the date of the first registration.

It is clear that this section not only limits trading in Nigerian waters (which coastal waters are part of) to ships built /owned, crewed and operated by Nigerians, but also extends it to non-Nigerian Commonwealth ships irrespective of where they are built and the nationality(ies) of their crews. It does not reflect or provide for the implementation of a true regulated Cabotage policy.

It is note worthy that in section 2 the MSA defines a “Coastal trade ship” as a ship other than an inland waters ship which does not leave Nigeria. It defines “inland waters ship” as a ship which is authorized only to ply within inland waters. In contrast to sections 425 and 426 of MSA, while stipulating special provisions for coastal trade and inland waters ships, does not limit these ships to Nigerian-owned or built and crewed ships. In sections 131 and 132, the MSA provides that the Minister of Transport may make construction rules prescribing requirements of the hull, equipment and machinery of any Nigerian ship or class of coastal or inland water ship, and that in respect of every ship over 25 tons gross tonnage to be built in Nigeria, its plans and

specifications must be approved by the Minister prior to the commencement of its construction.

In summary therefore, the MSA as it is presently and considering that it is still full of colonial rules, does not impose a cabotage regime on Nigeria and as such, its implementation cannot give Nigeria the much needed benefits of Cabotage Laws.

(b) National Shipping Policy Act:

Another law which regulates shipping in Nigeria whose provisions need examination in determining the adequacy of the Nigerian shipping laws in respect of Cabotage is the National Shipping Policy Act, Cap.279. The Act which establishes the National Maritime Authority also empowers it to achieve certain objectives conferred upon it by section 3 of the Act. These include to:

- i. promote the acquisition of shipping technology by creating and diversifying employment opportunities in the shipping industry through the stimulation and protection of indigenous shipping companies.*
- ii. improve Nigeria's balance of payments position by enhancing the earning and conservation of foreign exchange from the shipping industry;*

- iii. encourage the increase of ownership of ships and the achievement of indigenous skills in maritime transport technology; and*
- iv. promote the training of Nigerians in maritime transport technology and as seafarers.*

As can be seen from the above provisions, the Act has good intentions of using NMA to stimulate and protect indigenous shipping companies and increasing indigenous ownership of ships (and promote the training of Nigerians in maritime transport technology and as seafarers) which are part of the incidental benefits of Cabotage Laws. However, the Act has not gone far enough to aim at such objectives as coastal (and inland water) trade alone (which Cabotage is all about). Rather, they are aimed at foreign trade or deepsea shipping.

Even though, NMA's functions include the granting of "national carriers" status to indigenous shipping companies, (assistance of indigenous companies for fleet expansion and ship ownership) and in order to become "national carriers" at least, 60 percent of the equity of a shipping company must be fully owned by Nigerian individuals and enterprises and 100 percent of the crew must be Nigerians (Cf. Section 7 (a) and (g) of the National Shipping Policy Act). Since "National Carrier" ships are to operate on the deepsea and not on the Nigerian coasts or inland waterways, (section 7 (c) of the National Shipping Policy Act which Cabotage laws deal with), the provisions are inadequate for a true cabotage regime.

Moreover, even though, the Act stipulates that all “National Carrier” vessels and other Nigerian-flagged ships shall be serviced, repaired and maintained where practiceable in Nigeria, it does not so far enough as required in a true cabotage policy, provide that all other non-national carrier Nigerian-ships shall be built in Nigeria or/and owned by Nigerians.

Finally, because the Act’s provisions on cargo sharing and Cargo reservation are for only “National Carrier” ships engaged in foreign trade and not in respect of coastal and inland water trading, the Act has not excluded foreign ships from coastal and inland water trade as required in a cabotage regime and, as such, the Act is not helpful to the implementation of a true cabotage regime in Nigeria.

(c) Admiralty Jurisdiction Decree 1991:

Whilst the Federal Court has exclusive jurisdiction to hear civil cases or matters in any admiralty jurisdiction, including shipping and navigation on the River Niger or River Benue and their affluent and on such other inland waterways designated as international waterways by any enactment, Federal Ports and carriage by sea (section 251 (1) (g) of the 1999 Constitution), the Admiralty Jurisdiction Decree provides that, its admiralty jurisdiction includes any matter arising from shipping and navigation on any inland waters declared as national waterways (Section 1 (11) (f) Admiralty Jurisdiction Act, 1991).

On the whole, the Admiralty Jurisdiction Decree 1991 and the Admiralty Jurisdiction Procedure Rules, 1993 (and to some extent, the Federal High Court Rules, 2000) have made provisions for the practice and procedure of enforcing maritime claims which many arise from coastal and inland waterways shipping including crew's wages, damage to ships, loss of life or personal injury or loss of goods or damage to goods. Its definition of a ship is wide enough to include, "Coastal Ship" and "inland waters ship", and it provides for the arrest of a ship or other property at any place within the Nigerian territorial waters (*Cf. Sections 26 and 7(2), Admiralty Jurisdiction Decree, 1991, respectively*), (*as in Asoluka; 2003 p. 138*), which includes the Nigerian coastal waters.

(d) Carriage of Goods By Sea Act Cap. 44 Laws of the Federation, 1990 (COGSA)

The Nigerian COGSA has the Hague Rules in its schedule. Section 2 of COGSA states as follow:

"Subject to the provisions of this Act, the (Hague) Rules shall have effect in relation to and in connection with the carriage of goods by sea in ships carrying goods from any port in Nigeria".

This means that the Hague Rules shall apply to Nigerian Coastal shipping because it has effect in relation and in connection to the carriage of goods from one port to another in Nigeria, which includes what cabotage is all about (*Asoluka; 2003 P. 138*).

(e) Navigable Waterways (Declaration) Act Cap. 287

Under section 1 of the Navigable waterways (Declaration) Act Cap. 287, certain rivers, creeks, lagoons and inter-coastal water –ways specified in the schedule of the Act were declared as Federal Navigable waterways. They include the River Niger through the Nun and Forcados to the Atlantic Ocean, River Benue to Lokoja, the Cross River, River Sokoto, Anambra, Ogun, inter-coastal routes along Badagry Creek to Lagos Canal from Araromi to Benue River, waterway from Warri along Forcados River, waterway from Port Harcourt down Bonny River.

There may as well be other Navigable waterways that belong to States, because they have not been declared as Federal navigable waterways by this Decree. This Act is therefore only useful to the extent to which it makes known the Federal navigable waterways and those Federal navigable waterways which can be used for inland shipping and nothing more.

(f) The National Inland Waterways Authority Decree 1997.

It empowers its Authority to inter alia ensure the development of infrastructural facilities for national inland waterways network connecting the creeks and rivers with the economic centres using modal points as modal points for intermodal exchanges and to provide alternative transportation for the evacuation of economic goods and persons domestically.

The above two laws are not cabotage – complaint, since foreign ships are not prevented by them from trading in the Nigerian Coastal and inland waterways. From the examined provisions of the above Nigerian Shipping laws including the Nigerian Port Decree, the Ports Act, the Piers Act, it can be argued that, there is no present single Nigerian shipping legislation that has taken cognizance of a truly regulated Cabotage Policy or regime. The implication is that, a Cabotage regime cannot be implemented and enforced under and by virtue of the current Nigerian Shipping Laws.

A Cabotage Bill is therefore welcome as a prelude to the promulgation of a Cabotage Act in view of the fact that current Nigerian laws on coastal and inland shipping are not adequate to properly institute a Cabotage Policy for Nigeria. But the oversights, inconsistencies and problems in the Cabotage Bill which have been highlighted above, should be properly resolved and rectified immediately before the Cabotage Bill is promulgated by the National Assembly into an Act (*Asoluka; 2003 P. 139*).

It was also observed that notwithstanding the fact that the Cabotage Law is yet to be promulgated, indigenous shipping companies have been taking part in, and are free to take part in the Nigerian Cabotage business without resistance from Cargo interests. One of the problems they face in the circumstance is unhealthy competition in the Cabotage trade with the highly subsidized foreign vessels which also participate in and dominate Nigerian Cabotage trade without restrictions, whilst shutting Nigerian vessels out of

participation in their country's Cabotage trade. Upon the promulgation of the Nigerian Cabotage Act by the National Assembly, any indigenous shipping company that meets the requirements for taking part in Cabotage business as regulated by the Act, will be free at any time to participate in the business and enjoy all the benefits reserved in the Act.

Moreover, there may not be a need for a ministerial pronouncement or proclamation or decree on crewing and entry by indigenous shipping companies whenever capacity/bottoms exist within the time frame. It is the legislations existing on matters of crewing and participation by indigenous shipping companies that determine the requirements of crewing and time frame or conditions to be met before entering into Cabotage trade. A ministerial pronouncement which confirms the provisions of the legislations on those matters and enlightens the shipping community is commendable. But, a ministerial pronouncement which is not based on the legislations on the matters should not be encouraged (*Cf. Sections 20 – 33 of Merchant shipping Act. Cap. 224, especially sections 21, 24, 28 and 33; section (7) (g) National shipping Policy Act Cap. 297 and section 8 (1)d and 15 (d) of the Coastal and Inland Shipping (Cabotage) Bill 2001*).

It is note-worthy that until the latter has been passed into an Act (it does not have force of law), is worthless and unenforceable. This is because the 1999 constitution of the Federal Republic of Nigeria provides that only the National Assembly can make laws on matters relating to shipping

(including cabotage) whereas ministerial pronouncements do not have constitutional force of law and so cannot be enforced or binding when not in line with existing laws regulating matters which can be ministerially pronounced upon.

The Federal Minister of Transport is statutory empowered to make regulations generally for effecting the provisions of the Merchant Shipping Act. These regulations may provide inter alia for anything required or prescribed to be done under the Act, carriage of passengers and cargo (which of course includes cabotage), qualifications of officers and able seamen, certificates of competency and manning of ships with certified officers and able seamen. Since the Act has not provided for a true cabotage policy, no cabotage regulation by the Minister will correctly reflect a true cabotage policy. The Minister is also empowered to modify the application of the provisions of the Act to coastal trade and inland water ships to such an extent as he may by order provide.

However, unless such ministerial regulations or orders are laid before each House of the National Assembly for approval or amendment, the regulations or orders would be inoperative, although, without invalidating or canceling whatever has been purportedly done under the regulations or orders. The minister's regulations and orders are therefore no more absolutely elevated to enforceable subsidiary legislations, or usable as a means of quickly "subsidiary legislating" to fill gaps in existing legislations so as to avoid the rigours and delays in the debates in the National Assembly before needed legislations are passed. It is however arguable that, since

such regulations and orders not placed before and passing through the National Assembly, does not avoid any step taken under the regulations, the inoperative nature of such regulations or orders is inconsequential and so the Minister could make the regulations or orders without presenting them to the National Assembly for approval or amendment where there is an urgent need to fill gaps, provided that in the case of regulations, they are for the carrying into effect of the provisions of the Act (*Asoluka, 2003 pp. 139 – 141*).

2. 13.0 CARGO SUPPORT STATUS:

Introduction:-

The maritime potential of Nigeria is not in any doubt, Nigeria naturally is blessed with an extensive, navigable coastline of over 823 Km.

Demographically, it not only commands a huge population, thus a large market, but also blessed with a young population that is educated and eager to learn, to whom a key industry like transport surely offers opportunities. Every factor seems to be ready to give the nation a strong and resilient economy. The dilemma, however, is that Nigeria is still a very poor nation with a substantial proportion of the population living below poverty line. Ranked 16th among 197 nations in terms of per capita income and 141st in “quality of life” by the World Bank in 1996, there has been a great need to develop the nation’s resources. Meanwhile, it is only oil that has continued to provide the bulk of its income.

A possible starting point in Nigeria's economic development would be the need to appreciate and utilize other resources potentials, it is yet to tap. The transport sector remains largely untapped. The fact that it is the engine that drives development notwithstanding, in the transport industry, the importance of international trade to the health of the economy has given the maritime sub-sector a commanding height. Indeed, the importance of maritime activities is captured in the saying:

God must have been the first shipowner. He placed the raw materials far from where they were needed and covered two thirds of the earth with water.

And Nigeria is a time beneficiary of this endowment. Freight revenue from Nigeria's international trade for 1997 was US \$627 million. For 1998, it stood at US \$1.62 billion; US \$1.9 billion for 1999 and US \$2.056 billion in 2000. Its share of the west African sub-region is over 70 percent. As far back as 1650, Walter Raleigh seemed to have observed this crucial sector when he declared;

Whosoever commands the sea commands the trade; whosoever commands the trade of the world commands the riches of the world itself.

One therefore would expect that every nation with such maritime potential should naturally be haunted and provoked into an aggressive and proactive maritime planning programmes and support. However, the current state of affairs

in Nigeria's shipping industry would suggest the contrary. From the ageing seafarers to the old and declining tonnage, there seems to be just a small opportunity for growth. In the absence of sustainable assistance schemes and progressive policy reforms, it is indeed doubtful whether the Nigerian shipping industry can survive the competition in the very heated and unfriendly international waters where Major players come in armed with various types of subsidies from their home government. It has become clear that the instrumentalities of the past and the implementation mechanism of the NMA must be reviewed to meet the demands of the changing times.

A Federal Government directive suspended the system of Cargo allocation in February, 2000. The system had been designed to assist indigenous shipping companies secure a sizeable proportion of the nation's sea borne cargo and it derived its legal basis from sections 9, 14 and 18 of the National shipping Act (NSPA). This legislation, on its own, attempted to amplify and domesticate the 1974 UNCTAD Liner Conference Code of Conduct resolution providing States involved in bilateral sea borne trade, a distribution share of 40:40:20 ie each party was to lift at least 40 percent of trade generated between them, while cross traders were allowed a maximum of 20 percent.

Ever since February, 2000, when the directive to stop the cargo allocation practice was issued and complied with by the NMA, the fortunes of the national carriers and indigenous shipping companies have further slid. This situation has

raised questions as to the role and relevance of NMA in developing, supporting and building sustainable indigenous maritime capabilities. The scrapping of this seeming lifeline to indigenous operators has negatively affected the maritime industry and the economy. In the absence of efforts to support indigenous carriers with cargo, the risks faced by the carriers multiplied.

Not only have opinions varied, widened and deepened, opponents of cargo allocations have also remained convinced that only practices consistent with current trends in international shipping could bring about growth. Such influences as globalization, pressure and the establishment of the WTO, with its insistence on free trade as well as the liberalization of services as contained in GATS - General Agreement in Trade and Services have continually reduced the frontiers of protectionism and nationalism in matters of economics.

To support the case against the inherent inefficiency and disincentive for growth in protectionist policy, they have often cited the observed abuses of cargo allocation system practiced in Nigeria. While it lasted, liberalism proponents concluded that there was no positive result, neither for the shippers who were short-changed nor the national economy which did not witness any significant growth in its maritime capabilities.

One clear implication of this, however, is that, there is no settled position on this matter of shipping policy and practice,

whether the free market option is the magic wand that clears all maritime problems is yet to be seen. As a matter of fact, the resource to shipping nationalism arose from the suppression of the basic interests of developing nations to use their maritime potential as instrument for economic transformation. Even the United States of America, has recognized the need for maritime resources to be used as instruments of policy to secure both economic and defence ends.

However, the advocacy here is for a sustainable growth of Nigeria's domestic shipping industry which, over time, should be able to compete effectively. It is not a rehash of protectionism for the state of abusing and retarding general shipping interest. It is not also a closed system where forms of partnership and foreign joint ventures are not encouraged. Rather, it is a measure to use the potential of the subsector for the growth of the economy, improvement of the citizen's welfare and the development of a credible national defence capability. The concern, therefore, is to successfully protect national interests in a manner that can be defended and tolerated internationally. This is the true test for the success and sustainability of such a policy.

This imperative defines the maritime challenge facing the nation for now and in the future. It is a task only a refocused and purposeful NMA can take to build a strong competitive national maritime capability. Before it sets its policy reform agenda and process overhaul, it is needful to take a clear incisive and comparative approach. This would allow the

opportunity to observe and learn from other institutions in order to seek better ways of implementing its functions. Surely, without a review leading to a position based on a defensible, achievable and sustainable form of assistance to the Nigerian shipping community, the NMA is bound to be considered unresponsive and irrelevant to the very sector it was created to cater for. It would be negligent of its very assignment and by so doing would have outlived its usefulness.

It is indeed the desire to become alive to its statutory functions, relate with the stakeholders and help jumpstart the process of genuine development of the maritime industry, that the Board and Management of the NMA considered it essential to commission a study on the fundamental issue of cargo support and other areas considered germane for assisting indigenous shipping companies. A properly thought out approach to the sensitive issue of cargo support remains one of the key steps the NMA need to take to remain effective in addressing industry needs and attain efficiency in its operational support (Asoluka, 2003, pp.163 – 165).

2.13.1 The Conceptual Framework

Each time new experiments are observed to agree with the predictions, the theory survives, and our confidence in it is increased, but if ever a new observation is found to disagree, we have to abandon or modify the theory (Hawkins; 1998) (as in Asoluka 2003; P.159).

At any given time, orthodoxy has a way of assuming certainty and imposing intolerance that it takes courage to question a dominant view. Fortunately, in life, nothing is ever concluded and each day brings events that may support or destroy an age – long position. Like the physicists, whatever we do, however, must be subjected to empirical proof for validation or falsification. This is the justification for the development of a sound conceptual framework that guides our analysis, evaluation and review of policies. In the end, whatever position is arrived at should be more refined, practical and useful.

In the shipping industry today, there is no agreement on a general framework and attitude in the matter of international shipping policy. The attendant polarization of views seems to indicate losers and gainers on any particular advocacy. Expectedly, what may be favourable to a maritime big player becomes the graveyard of the small operators. Is the industry such that it is only good enough for predators? Is there no possible way of striking a balance such that all potential resources in the industry, irrespective of regional location, can be harnessed and duly rewarded? Is domestic shipping strictly to be defined in terms of local ownership, investments, operations and structures? Can there be a mélange of sorts? These matters remain at the center of the securing controversy in national and international shipping policies.

2.13.2 Aims of Shipping Policies

In general policies are statements of intentions, consisting of sets of ideas or plans of what to do in a particular situation by a group of people, business organizations or governments. Given the centrality of the economic question to the issue of welfare, it is hardly surprising that all responsible governments must take a position most beneficial to its citizens. G. O. Falokun's description of a policy as the instrument of development captures the essence of;

“Sectoral policy as government intervention concerned with the creation of institutional and organisational conditions that enable every sector of the economy to be work efficient and more productive”.

Because policies are problem-driven and objective-oriented, there is the need to involve all stakeholders. They cannot be made in isolation of local conditions, needs and aspiration. However, as a rule, for an effective and successful implementation regime, policies must seek to accommodate “critical success factors, external and internal conditions.”

One sector that reveals this dynamics is the shipping industry. By its very nature, it draws its life and energy from increasing global and integrated environmental quest for growth. While a national shipping policy is usually designed to satisfy the perceived interest of nation states or power groups within a country, whatever should become of an international shipping regime must, per force, satisfy the interests of majority of countries constituting its very stakeholders. And the resolution

of this question has thrown up a number of issues in the shipping world.

2.13.3 Comparative Review of Demand – Side Policies of State Cargo Support Programme

It has been observed that we have two broad types of support to national shipping interests. We have also noted that a national shipping policy, an element of overall economic policy, expresses the attitudes and goals of a state to shipping. As an economic instrument, it is not surprising that states try to create favourable conditions for the export function of shipping. The advocacy for liberal international shipping policy is not supported consistently by any state. In practice, all states recognize both the enormous importance of shipping and the fact that shipping is ever less able to develop without government aid or support. In a nutshell, while they support aspects of intervention in fighting for the rights of states in open registry, they also frown at flag preference. Also, while they encourage and support supply- side intervention in the form of various financial and fiscal packages, they criticize demand – side support, consisting of various forms of cargo support programme. A review of policies and practices shows that, denial of rights of States to operate cargo support scheme is, however, not as deep as it

appears. One fact remains that even the strong maritime nations adopt one form of cargo support or another. A quick review of shipping policies and actions of states presents the following facts.

(a) The E.U. countries-

These countries can be classified as strong traditional maritime countries (TMC's) whose developed economics have rested on international trade and dominance in shipping matters. They also constitute the bulk of states proclaiming liberalism in international shipping. Having successfully built sufficient maritime competitiveness, a defence of liberalism in matters of shipping is germane to the prosperity of their citizens and nations. Yet they have not shied away from supporting their nationals whenever the need arises. Such is the case that the erstwhile chairman of the OECD Maritime Transport Committee had to admit that "shipping cannot remain aloof and no government will render its assistance without knowledge of its real problem." Furthermore, the OECD's reports on the situation of international shipping have indicated that, state intervention is unavoidable, as almost all member countries, developed as they are, have some form of financial and fiscal assistance to ship owners and ship yards.

In addition, majority of the EU states still adopt cabotage regime which restricts domestic shipping to their national.

Almost all of them tolerate conference system, and indeed, have one time or another risen on occasion to stoutly challenge the US position whenever their shipping interests were affected by an anti-trust legislation.

(b) Asian Countries:

Apart from Hong Kong and Singapore, the Asian countries have not shown remarkable tolerance of liberalism in shipping. Malaysia, for example, as a typical developing nation eager to harness all its potentials for economic growth, has not hidden its agenda to promote its national fleet and other maritime interests. It has introduced a number of measures to encourage the development of its shipping industry. They include:

- Implementation of cabotage policy in 1980
- Granting blanket tax exemption on shipping incomes earned from Malaysian ships;
- Broad range of other local and financial incentives, including accelerated depreciation allowance on ships.
- Exemption from income tax for Malaysian crew serving on Malaysian ships
- Creation of state owned bank of industry with a view to providing funds to the maritime sector; and
- Creation of shipping fund to finance the acquisition of vessels by local owners as well as a venture capital for equity participation in local companies.

(c) The United States of America:

The United States of America, perhaps demonstrates the linkage between national interests and shipping policy. Whatever it takes to support its economic and security interest, the government of the United States of America has been extremely forth coming in providing both the legislative and financial support. Merchant Marine Act, 1936 of the United States, in its Title I, Section 101 declared its policy as follows:

It is for national defence and development of its foreign and domestic commerce that the United States shall have a merchant marine.

- (a) Sufficient to carry its domestic waterborne commerce and a substantial portion of the waterborne export and import of the United States and provide shipping services essential for maintaining the flow of such domestic and foreign waterborne commerce at all times,*
- (b) Capable of serving as a naval and military auxiliary in time of war or national emergency.*
- (c) Owned and operated under the United States flag by citizens of the United States in so far as may be practicable,*
- (d) Composed of the best equipped, safest and manned with a trained and efficient citizen personnel, and*
- (e) Supplemented by efficient facilities for shipbuilding and ship repair.*

It is hereby declared, to be the key policy of the United States to foster the development and encourage the maintenance of such a merchant marine. The agency mainly assigned the task of implementation is the Marine Administration (MARAD) MARAD among other functions:-

actively promote and develop the domestic merchant marine in support of the Department of Transportations (DOT) strategic goal of advancing America's economic growth and competitiveness domestically and internationally through efficient and flexible transportation.

In furtherance of this goal MARAD vigorously supports and monitors the implementation of:

- i) Cargo Reservation Laws which include Military Cargo Preference Act of 1904, Public Resolution 17, Cargo Preference Act of 1954, Public Law 664, Food Security Act of 1985, Export of Alaskan North Slope Oil and Penalties for substandard operations,*
- ii) Cabotage Regime including Jones Act and Administrative process for Jones Act Waiver, enacted as Titled V of Public Law 105 – 383*
- iii) Financial support to ship owners and terminal operators and shipbuilders, including vessel operations revolving fund (section 801 of the Act of June 2, 1951,*

Title Xi programme for ship financing guarantee, Title xiii for maritime education, training and various Export Loan Guarantee Programmed and National Shipbuilding Initiatives etc).

- iv) National Defence Reserve Fleet/Ready Reserve Force including section 16 of Public Law 104 – 239 on vessel repair and maintenance pilot programme, fast sea Lift Programmed, etc and*
- v) Clear legislative and political will to enforce protective laws as in section (3) of Military Cargo Preference Act of 1904, Title V of public Law 105 known as Administrative Process for Jones Act Waivers.*

Up till now, there is no sign that the United States of America is relaxing its grip on maritime legislations which favour its interest and citizens. Rather, it has instituted a number of steps to ensure competition amongst domestic operators and fair pricing. Judging from its example, it would appear that the clout of nation apart, cargo preference may be accommodated so long as commercial practice is not hindered. In the USA, private commercial transactions in international trade are not affected by its cargo preference laws; and cabotage, strictly speaking is viewed as an internal activity. In the final analysis, the impact of the cargo preference laws on domestic shipping has been tremendous.

From the survey above, it is clear that traditional maritime countries project liberal shipping commitment in order to extend their frontiers in their areas of strength. Yet, this general attitude is qualified by various protectionist measures by states which aim at securing certain advantages for their citizens and interests. Indeed, this is akin to desire of a parent who strives to give his child a good start in order to face future challenges. In shipping, while the developed countries concentrate on giving assistance to their citizens by supplying them with shipping services, cash trapped countries are only able to give what they have, and this is their cargo supports.

In a strenuous bid to draw a difference between the two forms of support, liberal apologists now maintain a basic criterion for defining protectionism. All supports are no longer “protective” except those that practice cargo reservation. This surely smacks of reductionism and mere sloganeering.

The real acid test for the success of any scheme depends on how sustainable it becomes. In a situation where support is not focused to lead to growth, resilience and competitiveness, then such would not endure. Meanwhile it destroys even the basis for growth as the absence of internal competition denies the system efficiency and innovation. How the NMA can best respond to this challenge will be considered subsequently.

2.13.4 Structural and Technological Changes in Maritime Transport.

Trends in Maritime Trade and Fleet Development over the past 30 years have resulted in major changes in maritime transportation. Maritime industry operators have achieved dramatic increases through innovation, creative application of modern technology, and the introduction of efficient intermodal systems that employ large, fast ships with relatively small crews. In 1970, the total volume of World Sea borne trade stood at 2605 million tons. By 1999, this has increased by about 120 percent to 5741 million tons. Conversely, the percentage of the trade by Africa declined from a mere 15 percent to about 11 percent in 20 years.

On the supply side, as observed, the world total deadweight tonnage (dwt) which stood at 326 million in 1970 increased by over 130 percent to 780 million dwt in 1999. The percentage share of the developing countries peaked at 30 percent during the period. About 58% of world merchant fleet which stood at 28,600 ships in 1999 is controlled by 15 countries. This represents over 70 percent of world merchant dwt. The remaining 30 percent is shared by other countries of the world.

Thus, the trade of the developing countries is mainly carried by foreign shipping companies. This, coupled with trade and shipping policies which largely leave the transportation arrangement in favour of foreign suppliers, suggests that Africa and most less developed countries have little control over the type of ships which call at their ports as well as over market freight rates. Freight rates as percentage of import

values is presently estimated at three percent globally; while the African average is above 11%. Most developing countries import on cost and freight (C & P) basis and therefore pay huge sums as freight. It should be noted that the resolution passed in 1991 by OAU Ministers of Maritime transport calling on African countries to change their trade terms to import on free-on-board terms (FOB) to enable them acquire the right to nominate vessels and negotiate directly on freight has not yielded much (*Asoluka, 2003, pp.181-184*).

2.13.4a Liner Shipping

Over the past decade, the liner shipping has undergone significant transformations which have made it the main driver of international seaborne trade and they, before now, formed themselves into conference lines. Before the extinction of conference lines, about 350 of them existed worldwide, Nigerian shipping companies belonged mainly to the following lines;

- UKWAL : United Kingdom West African Line Conference
- COWAC: Continent West African Route (France, Germany, Sweden)
- MEWAC: Middle East West African Conference Line (Spain, Marseilles, Italy and other Adraic Ports, Greece and Turkey).
- FEWAC: Far East West African Conference Line (Singapore, Malaysia, China, Japan, etc.)
- AMWAC: American West African Conference Line (Nigeria, India)
- Intermediate Africa: South Africa, Angola.

The operation of Line/container services requires large investment in specially equipped vessels, port installations and technical equipments. The heavy investments capital required for the acquisition of containers and other infrastructure has posed great difficulties to the developing countries and has resulted in the collapse of some liner companies in some of these countries, or at best their conversion to a non-vessel operating carriers. In the more developed countries of the world, the problem of high investment capital in liner shipping is being addressed through joint venture arrangements and other forms of business combines. Thus, liner shipping is expanding in the developed countries and consequently taking control of the world trade.

The gradual weakening of the liner conference system has led to the strengthening of the non-conference operators, particularly, G & C Maersk, OT Africa and the America-Africa-Europe line.

2.13.4b Bulk Shipping

The carriage of bulk (wet or dry) and primary commodities has become very important in maritime economic and international trade. Significantly, vessel capacity has been achieved in the past thirty years. Vessels now range from the small coasting and inland waterway vessels of very small tonnage to the very large and ultra large “crude carrier” tankers (VLCCS or ULCCS) of 250,000 tonnes or more. The wet bulk tanker sector is dominated by the developed countries of the world and can be divided between those vessels owned by the oil

majors (Exxon Mobil, Shell, BP, Texaco, etc) and those owned by “independent shipowners” (Nedlloyd, P&O, Bergesen etc). It was this division that led to the formation of the International Association of Independent Tanker Owners (Internko) to provide market stability for their members in the face of competition against more powerful oil majors. However, the boundary between the oil majors and independent tankers is blurring with the growing trend on tanker chartering (or hiring) by the oil majors.

Dry bulk shipping is concerned with carriage by the full shipped or shipload of the world primary “dry” commodities such as coal, grains, cement, fertilizers etc. as with the tanker, dry bulk shipping is of an essentially non-scheduled nature. Movements are very much dictated by the needs and wants of the world economic situation. The capacity of the typical bulk carrier world wide can range from handy size (10,000 – 40,000 tonnes) to the cap size (of over 100,000 tonnes).

In the past 20 years or so, there has been a development of a special type of bulk ship capable of carrying either wet or dry bulk cargoes, the so called OBO (Oil/Bulk/Ore). To that extent, the two sectors may meet and one can well have an impact on the market of the other. But essentially, the wet and dry sectors of bulk shipping are separate and distinct.

2.13.5 Scope of the Nigerian Maritime Transportation System.

The Nigerian Maritime Transportation System comprises seas and inland waterways and associated infrastructure (e.g dams, aids to navigation etc) which is linked to a network of international ocean trade routes. The system also includes vessels that carry waterborne cargo ships, ship operators, ports and the labour force.

Presently, the Nigeria vessel fleets engaged in both foreign and domestic trade have a combined capacity of approximately 400,000dwt. The product mix shows mainly general cargo vessels, motor boats and trawlers. Only five vessels, with a combined dwt tonnage of about 70,000 are ocean-going. Infrastructural facilities, cargo handling plants/equipments, fire fighting boats, dredging equipment etc exist at the various ports for successful operation of the Nigerian maritime transport. The maintenance and development of these facilities rest solely with the Nigerian Ports Authority (NPA). The NPA also provide ports security, dock labour and port reforms to engender viable sea transport services.

Shipbuilding and repair companies are also available in the Nigerian maritime industry. Although a number of shipyards exist in the industry only three are operational, the largest being Nigerdock Nigeria Ltd. Nigerdock's records show that the company has built 28 vessels and repaired 218 others. Its capacity is, however, limited to the production of small vessels for inland water transport at the moment. It is envisaged that

the privatization of the company will lead to increased capacity and increased activities in the industry.

2.13.5a Cargo Ship Traffic in Nigeria

A breakdown of the cargo throughput at the Nigerian Ports excluding crude oil is given in table 2.13.5ai. The figures reveal that liquid bulk composing mainly refined petroleum products accounts for over 36 percent of the cargo flow at the ports. A further breakdown by foreign and domestic traffic reveals that the former contributes about 70 percent of the cargo throughput. It is also observed that over the period in consideration (ie. 1996 to 1999), there has been an average of 12% steady rise in total trade. A higher rate of increase is projected beyond 1999, given the present economic and political climate in Nigeria which encourages the inflow of foreign investments which was virtually paralysed during the era of military dictatorship.

Table 2.13.5ai: Cargo Throughput in Nigerian Ports (Excluding crude oil Terminals), by Foreign and Domestic Traffic (Tonnes) 1996 – 1999.

YEAR	1996	1997	1988	1999
General cargo	4,752,363	5,950,117	6,615,184	7,478,043
Dry Bulk	2,810,359	3,516,114	4,806,833	4,773,955
Liquid Bulk	7,912,579	7,116,574	9,903,701	9,980,938
Total Trade	15,475,301	16,582,805	19,325,718	22,232,936
Foreign Traffic	10,581,395	11,146,117	15,311,976	18,328,985
Domestic	4,893,906	5,436,524	4,013,742	3,903,951

Traffic				
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Source: NPA Abstract of Port Statistics (1997 & 1999)

(As in Asoluka, 2003. pg. 187)

The inclusion of crude oil as shown in Table 2.13.5a_{ii} below presents a reversed scenario, whereby outward cargo far exceeds inwards cargo. As in table 2.13.5a_i above, the cargo throughput at ports and oil terminals show slight variation from 101, 869, 105 tonnes in 1996 to 114, 696, 200 tonnes in 1999.

Table 2.13.5a_{ii} – Cargo Throughput in Nigerian Ports/Oil Terminals 1996 – 1999 (Tonnes)

YEAR	1996	1997	1988	1999
Outward				
General Cargo	1,060,115	1,160,252	1,091,707	1,239,096
Dry Bulk	300,039	513,268	490,425	294,362
Crude oil	86,420,804	99,667,533	97,953, 211	92,463,264
Liquid Bulk	3,890,847	3,695,631	3,456,722	4,948,147
Sub-total	91,671,805	105,036,714	102,992,065	98,944,869
Inward				
General cargo	3,092,248	4,789,835	5,523,477	6,238,947
Dry Bulk	2,510,320	3,002,846	4,316,408	4,479,593
Liquid	4,021,732	3,420,943	4,446,979	5,032,791

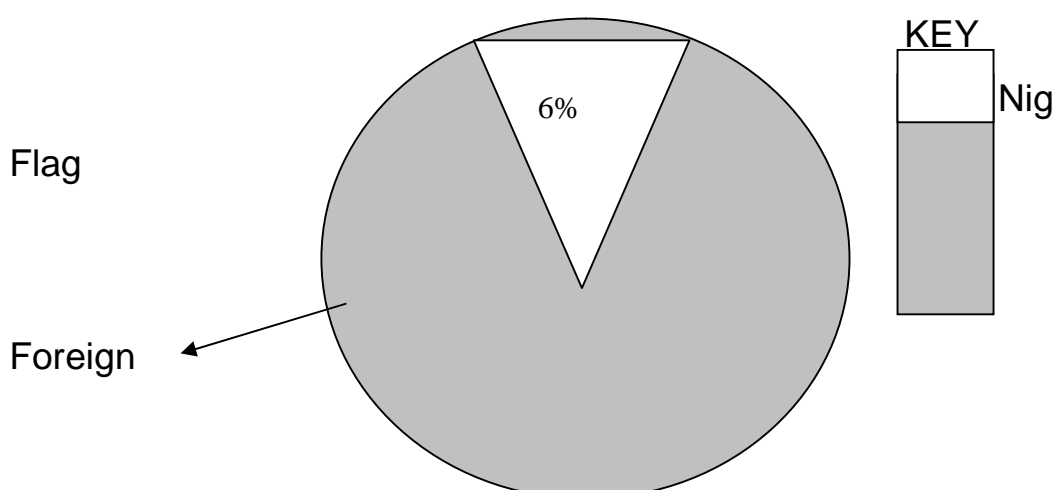
Bulk				
Sub Total	10,224,300	11,213,624	14,286,860	15,751,331
Grand – total	101,896,105	116,250,338	117,278,929	114,696,200

Source: Samatrade 2001 Adopted from NPA Abstract of Ports Statistics, 1997-1999 (*As in Asoluka; 2003. p.187*).

2.13.5b Nigerian Foreign Trade

As at December 2001, Nigeria's total trade was estimated at USD 23,167 million, accounting for about 0.2 percent of the annual world ocean borne trade. Of average of about 18,750,000 tonnes of cargo (excluding crude oil) reported annually at the Nigerian Ports, only about six percent is carried by Nigerian flag vessels. When crude oil is included, participation by Nigeria flag vessels drops to about one percent of the total trade.

Figure 2.13.5bx: Percentage Participation in Nigerian Foreign Trade by Nigerian Flag Vessels and Foreign Vessels



94%

Flag

Because of the small size of the Nigerian Shipping fleet, foreign earnings from international trade have been small. Hence, Nigeria has on a net basis, continued to pay huge/large sums on freight, averaging about USD 760 million (excluding crude oil) per annum.

2.13.5c Carriage of Nigerian Crude Oil

Crude oil contributes the main stay of the Nigerian economy, contributing over 80 percent of the country's total revenue.

Table 2.13.5ci below, indicates the contribution of crude oil to total trade. International trade in this sector is dominated by foreign tanker operators who also enjoy the advantage of Free on Board (FOB) based transactions terms with the Nigerian Petroleum Corporation (NNPC).

Table 2.13.5ci: Contribution of Crude Oil to Nigeria's Total Trade, 1996 – 1999

Year	1996	1997	1998	1999
Total Trade	101,896,105	116,250,338	117,278,929,	114,696,200
Crude oil	86,420,804	99,667,533	97,953,211	92,463,264
Others	15,475,301	16,582,805	19,325,718	22,232,264
Percentage				

contribution crude oil	85.14	85.34	82.90	80.70
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*Source: Adopted from NPA Abstract of Ports statistics (1996-1999)
(As in Asoluka; 2003. P.189)*

The non-participation of indigenous shipping companies in the carriage of Nigeria's crude oil has a lot of negative implications on the Nigerian economy. This situation has persisted despite the provisions of the NNPC Act No. 33 of 1997, which stipulates in sections (d) and 9 (c) among other things, that:

The corporation should, among other duties, provide and operate tanker ships for the carriage of crude oil and its products and derivatives (cf. section 5 (d), the participation of national carriers on the carriage of bulk cargoes to and from Nigeria shall be subject to carriage right of not less than 5% of such cargoes (Cf. section 9(c)).

It is clear that these provisions were introduced to provide support for Nigerian-owned tankers but the non adherence of the NNPC to these provisions has continued to impact adversely on the Nigerian Shipping industry (Asoluka; 2003 p. 189).

2.13. 5d Coastal Trade – Sub-regional Coastal Trade

This involves the transportation of commodities between Nigeria and other countries in the West and Central Africa.

The trade is mostly on crude oil and petroleum products carried from Nigerian oil terminals and ports to the sub-regions on West and Central Africa. Export of crude oil increased by 26 percent from 19 million metric tons in 1999 to 24 million metric tons in 2000 (Cf. Table 2.13.5di). Other components of the trade which include non-oil exports from Nigeria and imports into Nigeria from the sub-region is minimal. Total imports amounted to only 72,303 metric tons in 1999. The trade is also dominated by foreign tankers because of the non-involvement of Nigeria in crude oil shipping.

Table 2.13.5di Nigerian Sub-Regional Trade

Year	1996	1997	1998	1999
Volume of Imports	288,956	181,279	72,303	
Export of Crude Oil			19,180,582	24,482,567
Export of Non-Oil Product	1,913,000	2,402,000		
Total	2,201,956	2,583,279	19,252,885	24,482,567

Source: Soma Trade/compiled from NMA Annual

Reports and NPA Abstract of Port Statistics (1997-1999).

Domestic Shipping: Domestic Shipping includes commerce in the Nigerian coasts and inland waterways. Nigeria's Coastal line stretches over a distance of about 850km bordering the Atlantic Ocean with exclusive economic zone of about 200,000 km.

Trade in this section involves mainly petroleum products transported between Nigerian ports. In 1999, domestic shipping operations handled a total of 3.9 million metric tones of cargo, out of which petroleum products accounted for about 22 percent. The inland waterways transport is not yet well developed. The existing system involves the movement of a few passengers and their small tonnage of cargo and personal effects along the major river and creeks. These are found mainly in Lagos and the Niger Delta region. Other areas, though of little activity, include the River Niger and River Benue.

2.13.5e The Nigerian Public Sector Cargo.

Public sector cargo refers to cargoes so identified by section 14 of the NSPA. In the main, they comprise cargoes generated by any of the three tiers of government or their agencies either, in direct production or where they are financed by such institutions.

The components can be decomposed into four as follows:

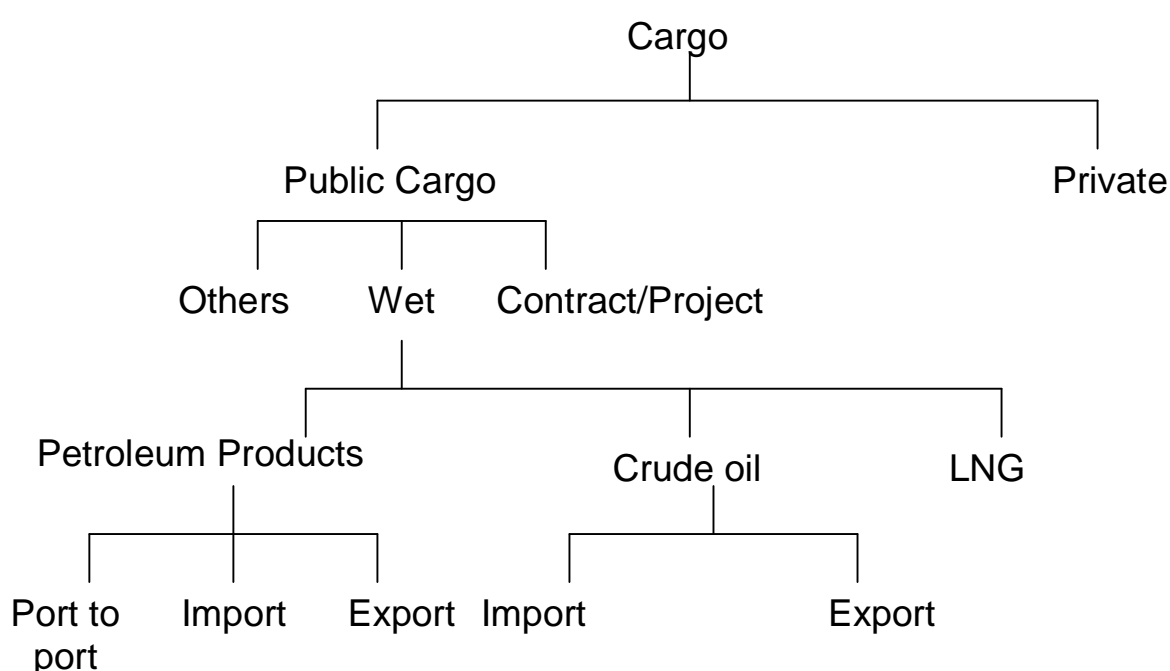
- Crude oil- based on the joint venture activities of the NNPC with major oil companies, about sixty percent of the volumes and activities in this sector can safely be classified as public sector cargo. By 1999, it was estimated at 93 million metric tons. The export of this volume is largely on FOB basis, contrary to section 14 of the NSPA. However, given the sensitivity of revenue from this sector to the economy, any measure that

threatens a steady and uninterrupted flow in crude, sets a challenge for the NMA to creatively come up with a set of control and involvement that is practiceable.

- Public sector contracts/projects and Government Assistance Scheme. With the huge financial outlays in various budgets on capital expenditure, cargoes generated by public contract awards are quite large. From the various construction projects (e.g. the National Stadium, Abuja) to infrastructure rehabilitation (e.g. NEPA Cargoes) and various turn-key projects, including oil related investments and rehabilitations, annual estimates of value of cargoes involved run in excess of one trillion naira. A rule of the thumb in freight value estimates for African countries at 10 percent creates activity within a range of N100 billion. Also, various diplomatic assistance schemes or supports generate cargo and freight business of some sizeable volumes.
- Petroleum products: In terms of volumes handled at the Nigerian Ports, petroleum products rank second with estimated throughput of over eight million metric tons in 1999. As is the case with crude oil, the bulk of this cargo category can be classified as a public sector cargo.
- Liquefied Natural Gas (LNG): Of late, the rate of investment in the sub-sector has increased steadily with the sixth train estimated to gulp up to \$5 billion. However, this remains one area where the law excludes the operations of the NSPA, but it is important to note that, it rightly belongs to the realm of public sector cargo and generates quite an enormous volumes and value or

maritime business. As a matter of fact, estimates by the consultant in this respect and in this way, indicates that up to \$9 million dollars is lost annually in carriage of material for this project alone. Other maritime services required by offshore oil operations constitute a large chunk of public sector cargo.

Figure 2.13.5ey Composition of Nigerian Public Sector Cargo.



A comprehensive estimate of components of public sector cargo as displayed in table 2.13.5ei shows the dominance of public cargo over private cargo. From the table, public sector cargo is estimated at over 70 percent of Nigeria's international trade.

**Table 2.13.5ei Nigerian Public and Private Sector Cargo
Distribution by Tonnage 1996-1999 (Estimated)**

Year	1996	1997	1998	1999	Total
Gen. Cargo	2,401,129	3,302,593	3,513,201	3,934,217	13,151,140
Dry Bulk	1,044,686	1,183,274	1,784,571	2,255,221	6,267,752
Petro. Products	7,743,137	6,877,407	7,238,965	8,103,588	29,963,097
Crude Oil	86,420,804	99,667,533	97,953,211	92,463,246	376,504,872
Sub - Total	97,609,756	111,030,807	110,489,948	106,756,290	425,886,804
Private Cargo					
Gen. Cargo	2,351,234	2,647,524	3,101,983	3,543,826	11,644,567
Dry Bulk	1,765,673	2,332,840	3,022,262	2,518,734	9,639,509
Liquid Bulk	102,183	239,167	664,736	1,877,350	2,883,436
Sub - Total	4,219,090	5,219,531	6,788,981	7,939,910	24,167,512
Grand Total	101,828,846	116,250,338	117,278,929	114,696,200	450,054,313

*Source: Somatrade 2001 compiled from NMA, NPA and CBN
records (As in Asoluka; 2003, P.193.).*

**2.13.5f. Offshore Oil and Gas Services Potentials/Local
Contents.**

The significant expansion has taken place in the Nigerian oil and gas sectors in the past 18 years. Offshore oil and Gas exploration and production activities have intensified, resulting in increased need for transportation and other support services. Table 2.13.5fi below shows the type and size of vessels employed in the Nigerian offshore oil and gas support services. Participation by indigenous companies is sizeable, approximately 60 percent IN the areas of barge and boat services.

Table 2.13.5fi Type and size of Vessels Employed in the Nigerian offshore Oil/Gas support Service.

Type of vessel	No > 100NRT	TOTAL NRT
Barge	37	16,085
Tanker	27	5,145
Cargo	2	6,523
Dredger	3	358
Tug	2	771
Boat	3	1,814

2.13.5g Nigeria's Vessel Capacity

Under International Law (General Convention Articles), the nationality of a ship is determined by the territorial registration, that is, the territory of its registration. In other words, a ship has the nationality of its flag state. Every State, however, determines its own specific registration requirements.

The registration of ship in Nigeria is governed by the merchant shipping Act of 1962 which stipulates the following requirements:

- i. A ship will not be eligible for registration in Nigeria unless she is owned wholly by;
 - a. a commonwealth citizen,
 - b. corporate bodies established under and subject to the law of a commonwealth country and having their principal place of business in a commonwealth country.
- ii. A ship is defined to include any barge, lighter or like vessels used in navigation in Nigeria.
- iii. The vessel must be up to or more than 15,000 tons
- iv. The vessel must have been surveyed by government surveyor of ships and must have been declared seaworthy
- v. The vessel must have been deleted from her previous registry or if it is a new vessel, a builders' certificate must be included; a carving or marking note together with the proper colours must also be on the vessel.

Raw data from Government Inspector of ships as shown in Tables 2.13.5gi and 2.13.5gii below, suggest that the number of merchant vessels of 15,000 tons or more on Nigerian register in the 10 years period, 1987 to 1997 was 33 with a combined dwt tonnage of 449,858. But over 70 percent of the vessels were due for the scrapyard by 1989 because of age and deterioration.

The records also suggest that at the end of 1999 Nigeria had a total of 125 merchant ships comprising mainly tankers, passenger vessels, ferry and cargo vessels with 100 gross tonnage and above, which are subject to IMO instruments. The combined gross tonnage of the vessels is 395,000. However, other sources indicate that in the year 2000, a total of 2694 vessels of 100 tons or more with a total dwt tonnage of 44,000.000 were on the Nigerian register. The type and number of these vessels are provided in table 2.12 5giii.

Table 2.13.5gi: Number and deadweight of merchant Ships Owned by Nigerian Shipping Company 1987 – 91

		1987		1988		1989		1990		1991	
		No. of Ships	Total DWT	No. of Ships	Total DWT	No. of Ships	Total DWT	No. of Ships	Total DWT	No. of Ships	Total DWT
1.	Nig. National Shipping Line	19	268,000	19	268,000	13	192,000	13	192,000	13	192,000
2.	Nig. Far East/Henry Stevens Shipping Line										
3.	Niger Ocean Line	1	15,814	1	15,814						
4.	African Ocean Line	2	34,740	2	34,740						
5.	Nigerian Green Line	2	39,304	2	39,304						
6.	Bulk Ship Nig. Ltd	1	16,000	1	16,000	1	16,000	1	16,000	1	16,000
7.	East West Coast Marine Service										
8.	Genesis										

	Worldwide Shipping										
9.	Faset Nig. Ltd.										
10.	Brawal Shipping					1	12,000	1	12,000	1	12,000
11.	Nig. Unity Line										

Source: GIS (As in Asoluka; 2003. P196)

Table 2.13.5gii

Number and Deadweight of Merchant Ships Owned by Nigerian Shipping Companies 1992-97

		1992		1993		1994		1995		1996		1997	
		No. of Ships	Total DWT	No. of Ships	Total DWT	No. of Ships	Total DWT	No. of Ships	Total DWT	No. of Ships	Total DWT	No. of Ships	Total DWT
1	Nig. National Shipping Line	13	192,000	N/A	N/A	N/A	N/A	5	N/A	5	N/A	3	N/A
2	Nig. Far East/Henry Stevens Shipping Line												
3	Niger Brass Shipping Line												
4	African Ocean Line												
5	Nigerian Green Line												
6	Bulk Ship Nig. Ltd	1	16,000	1	16,000	1		2	N/A	2	N/A	2	N/A
7	East West Coast Marine Service			1	N/A	1	N/A	2	N/A	2	N/A	2	N/A
8	Genesis Worldwide Shipping							1	N/A	2	N/A	2	N/A
9	Faset Nig. Ltd.					1	N/A	2	N/A	2	N/A	2	N/A
10	Brawal Shipping	1	12,000	1	12,000	1	12,000	1	12,000	1	12,000	1	12,000
11	Nig. Unity Line							1	N/A	1	N/A	1	N/A

Source: GIS

Table 2.13, 5hiii: Number and type of Nigerian Registered vessels, 2000

Type of vessel	Number of Nigerian Register
Cargo Ships	68
Tanker	132
Tug boats	190
General cargo	1078
Patrons	40
Motor boats	614
Trawlers	524
Dredgers	48
Total	2694

Source: Nigerian Shippers Council (NSC).

The disparity in the data from the two sources may be explained on the basis of the fact that the NSC records may not have provided for scrapping, deletion and deterioration.

On the basis of vessel visits to all Nigerian ports and crude oil terminals, all Nigeria's participation in sea transportation is weak. Out of a total of 3208 vessels that entered Nigerian ports and crude oil terminals in 1996, the number of Nigerian flags was 536 with a combined NRT of 813,229. And by 2000, the number has reduced to 139 with a combined NRT of about 440,000. a summary of the number and NRT of all the visiting vessel is provided in table 2.12.5hiii. The framers also indicate that tanker business in Nigeria is controlled by foreign shipping companies.

Table 2.13.5hiv: No and NRT of Vessel that entered Nigerian Ports/oil Terminals

	1996	1997	1998	1999	2000
Tanker					
Total No	629	693	706	639	
Total NRT	41,126,605	44,713,740	44,924,309	40,561,719	
Nigerian No	1	Nil	Nil	Nil	Nil
Nigerian NRT	95,283	Nil	Nil	Nil	Nil
Other vessels					
Total NRT	12,149,340	13,522,601	15,131,734	16,631,300	
Total No	2579	2892	3266	3423	2360
Nigerian	813, 229	786,797	871,416	778,514	441,031

NRT					
Nig. No.	536	535	680	557	139

Sources: Extracted from NPA abstract of ports statistic.

Predicated on the above premises, Nigeria's vessel capacity, including vessel of all types with a minimum of 100gross tonnage is estimated at 400,000 dwt tonnage.

2.14.0 THE NIGERIAN SPIRITED IDEA TO EXPAND MARITIME ACTIVITIES.

The national maritime authority (NMA) is the apex regularity body in the nation's maritime sector. The Authority has over the years or so, undertaken some reform measures to create the enabling environment for full participation of indigenous shippers in the nation's inland waterways and sea borne trade, according to Ferdinand Agu, the former Director-General of National Maritime Authority (NMA). So many issues are involved in the implementation of the cabotage laws. According to Agu, despite the successes recorded in the implementation of cabotage law, it is possible that some people may have a limited vision of the law or may not have sufficient information on the multiplier effect the law has began to create. Whatever the case may be, (he opined) the facts are as, follows:

The cabotage law has a product in mind as well as a process for creating that product. The envisioned product is increased Nigerian participation and ultimately control by Nigerians of

our coastal and inland water shipper services delivery. If one should take a limited view, one would expect that we achieved total or significant control the moment the law is brought into force. Indeed, this seems applicable to those with some modicum of capacity who expect that their capacity will be put to use immediately. However, if one takes a wider perspective of the industry, one will see that there are many areas where we need several months or may be years for us to effectively increase participation by Nigerians, achieve dominance and eventual control by Nigerians.

This is where the process aspect of the law comes into place. We need closer cooperation between the maritime service providers, the oil and gas industry which demands the shipping services, the banking and financial sector that intermediates and provides the financial nexus in services delivery, and some government regulatory agencies that superintend aspects of the maritime and oil and gas sectors. In the last six months, we continued doing ground work to engender this collaboration and cooperation. Some results are already evident. It is expected that by early December 2005, the NMA and NAPIMS would co-host on behalf of NNPC and the Federal Ministry of Transport, a seminar that could bring together maritime industry services providers and oil and

gas industry service consumers. This should help bridge areas of this understanding between both sectors.

Secondly, Mr. Agu has had very positive response in terms of investment outlay for shipbuilding and ship repairs by Nigerian companies and some of their foreign counter parts. So, to him, there is already clear evidence that the cabotage law will be an effective tool to attract investment into Nigeria and create employment.

Finally, we are witnessing greater efforts to engage major shipping companies in the training of cadets and ratings for their Nigerian services. So, one can say with confidence that the promulgation of the cabotage law is unfolding steadily and the gains will be sustainable even though it may not appear as dramatic as has been expected.

As regards to the issue of protests of double registration for cabotage by indigenous maritime operators the Chief executive said, we have to be careful in using the words “indigenous maritime operator.” That he is aware that some operators in their interpretation of the law have expressed reservations about a cab-specific registration. But we have always maintained that when one has a law in place one abides by it and if indeed there is a consensus that there are aspects of the law to be fixed, and then the national assembly will do the needful.

That he would not use the word “repatriated”, but would rather say that we did not meet the threshold requirements of the Malaysian International Shipping Corporation (MISC) for placement aboard their vessels and this was in the area of medical fitness. It was nothing life-threatening or contagious. It is just common ailment that when sorted out they can hopefully resume their career at sea.

The chief executive confirmed that 30 cadets were receiving training in Malaysia and that they were doing very well. He continued, we entered into a move with a Malaysian group that intends to assist in our fleet expansion and maritime infrastructure development. They came down to Nigeria and there was a meeting organized between them and the maritime stakeholders with sundry interests that require financing. They have since returned to Malaysia to explore the viability of the proposal they received. Replies are being awaited, on which area they intend to apply their funds. It is important to underline the facts that, we are dealing with a government led but private sector-driven economy. That is to say government will simply play a facilitating role and allow market forces and sound commercial considerations between willing private sector parties to determine the final outcome of such interaction so long as it is in the overall economic interest of Nigeria (*An interview with the Director-General/Chief Executive Officer, NMA; BusinessDay Newspaper, Monday November 29, 2004, page 26*).

2.14.1 Impediments to Maritime Financing in Nigeria.

The impediments here refer to the hindrance, the problems cumulating against, things forming blockade or barricading the financing of the Nigerian maritime industry. These impediments can be classified into three major categories.

- i. Policy failure
- ii. Inefficient judiciary system
- iii. Inactive organized private sector

2.14.1a Policy failure: This happens to be the greatest hindrance to maritime financing. No prospective investor will commit his funds into a venture unless the environment is conducive for investment. The government can create that environment through appropriate policy formulation. So far, existing policies in the maritime transport and financial sector are inadequate to meet the aspirations of the potential investors in the maritime industry. This situation has been aggravated by the political instability in the country caused by the polity, the government and the associated agencies. There is a need for a comprehensive maritime, transport, monetary, fiscal and financial policies of the Federal Government to be urgently reviewed. This will enhance the potential of the country and hence, induce investors to do the needful.

2.14.1ai Maritime policy in Nigeria: There is an urgent need to develop a comprehensive, cohesive and effective maritime policy for Nigeria by Nigerians. The vast opportunities present in the Nigeria maritime terrain can not be fully explored with the current haphazard maritime policies. The envisioned

maritime policy should go beyond shipbuilding, ship-repairs, ship acquisition and fleet expansion. Technical services, operational issue, capacity development, electricity generation, fisheries, deep-sea mining and a host of others, are the crucial elements to be focused in our discussion about our maritime policy. Some other issues to be discussed should have been

- Marine Environment
- Safety Questions
- Maritime Labour
- Capacity and Institutional Development
- Maritime Financing
- Taxation and others.

The policy should also account for the poor performance of existing maritime institutions. These institutions are to be overhauled to achieve their set objectives.

2.14.1a ii The Trouble Spots in Maritime Industry:

The National Maritime Authority (NMA):- there is a clear misunderstanding of the functions of NMA in policy formulation and implementation. Is the NMA a service provider or a regulator or a developer of maritime institution? Is the NMA a policy maker or a policy executor or both? The National Shipping Policy Act setting up NMA does not provide clear answer. The functions of NMA are unwieldy and too burdensome. It is suggested thus;

1. Amend the National Shipping Policy Act to streamline the functions of NMA. The NMA should have only the following powers:
 - Registration of national carrier vessels.
 - Control of cargo- allocation, assignment and allotment.
2. Add an inspectorate division in NMA to enforce compliance with the provisions of the National Shipping Policy Act.
3. Create a National Maritime Commission (NMC) to among other things assume the functions and power of the NMA in respect of the followings:-
 - Formulation and development of maritime policies;
 - Coordination of government agencies in the maritime industry,
 - Development of shipbuilding and owning capacity,
 - Development of shipping services
 - Development of indigenous liner conference
 - Development of coastal and inland waterways etc.

Nigerian Ports Authority (NPA):- Despite recent reorganization by the government, NPA has some outstanding problems. These are:- Inflated tariff and port charges which has made our ports to be the most expensive in the African sub-region (*as in Omsa; 2005. p.21*).

- Indecision by the government on the nature and level of private participation in NPA- whether by total privatization or concessioning.
- Festering relationship between NPA and dock workers.
- Failure to develop inland ports and dry ports
- Failure to make necessary reforms to conform with the changes worldwide in handling international transportation. Massive reorganization of the sector is necessary. The ultimate objective is to achieve port customer satisfaction through:
 - Reduction of freight transit cost
 - Enhanced quality services
 - Development and maintenance of port tools
 - Integration of the port in the logistic chain. The port should organize the other multimodal transport (Road, Rail and Inland Waterways) to its advantage.

This can be done by acquiring control over these sectors for instance, by acquiring interests in Railway Corporation, setting up interim Freight Distribution Centers.

Cargo Allocation Scheme:- The National Shipping Policy Act, domesticates the United Nations Conference on Trade and Development (UNCTAD) Code, 1970. Nigeria adopted the Code on September 10, 1975. The UNCTAD Code prescribes that 40 percent of the total volume of cargo traffic and revenue shall be reserved for indigenous national carrier, another 40 percent for carriers of cargo originating from destination countries, and 20 percent for all recognized third-flag carrier.

The code signifies the effort by third world countries to redress the imbalance in shipping services worldwide. On December 29, 1981, the Shagari Administration launched what was called a New National Shipping Policy. The policy re-emphasized the spirit and letter of UNCTAD and stated its concern that Nigeria's merchant marine should be sufficient to carry our domestic and international cargo. On April 30, 1987, the National Shipping Policy Act was passed.

It was hoped by many that, the National Shipping Policy Act would be faithfully implemented to correct the imbalance in the Nigerian Shipping Trade. Promote the export trade of Nigeria and thus accelerate the rate of growth of the national economy promote the acquisition of shipping technology through the stimulation and protection of indigenous shipping companies and encourage the increase of ownership of ships and the achievement of indigenous skill in maritime transport technology.

Pursuant to the objectives of the Act, NMA set up a Cargo Allocation scheme whereby in bound and out bound cargoes were allocated to foreign and indigenous shipping companies following the 40:40:20 formula. The scheme was created to help Nigerians develop capacity to own vessels. On account of massive abuse, the Federal Government scrapped the scheme early 2004. The Federal Government promised to review the scheme to make it achieve its intended goals but too much time is being wasted on this.

2.14.1b Transport Policy for Nigeria:

It had been pointed out that huge potentials exist in maritime transport. Maritime transportation is however one of the legs on which Nigeria multimodal transport system rests. The others are the rail, road, and aviation. Investments in any of these sub-sectors are inevitably affected by the government's Transport Policy. It is not surprising therefore that these sub-sectors are in equal state of neglect. In a rare display of candor, His Excellency, Vice President Atiku Abubakar, admitted recently that due to past neglect, there is substantial backlog of structural reforms in the transport sector. The admission was contained in Vice Presidents opening address at the work shop on concessioning in the transport sector on April 3, 2000. His Excellency acknowledged that the transport sector is currently a major drain on scarce resources of the government even though; it has the major potentials to become a revenue generator and an engine of economic growth.

Vice President Atiku indicated that the structural reform would focus on redefining the role of government and the private sector in the transport sector. The reforms would be carried out in the following sequence:

- Appointment of transport sector steering committee.
- Formulation of National Transport Policy
- Review of legal and regulatory framework
- Privatization or commercialization

It would be recalled that all the major companies providing transport services were State-Owned Enterprises (SOE). The statement of the Vice President is a clear admission of the failure of SOE'S while the Federal Government has indicated her intention to divest from direct involvement in the relevant enterprises, it is uncertain how they intend to pursue this measure. The following options have been suggested:

- i Privatization
- ii. Commercialization
- iii. Concessioning and most recently
- iv. BOT (Build, Operate and Transfers).

It suggested that in formulating a transport policy for Nigeria serious attention should be given to developing a comprehensive cabotage law for Nigeria. Under the cabotage policies of the industrialized nation's laws are enacted to ensure that vessels used to transport cargo and passengers between the ports of the country and within her inland waterways are owned by her citizens, built in her shipyards and manned by crews of her nationality. This would have the effect of boosting our national shipbuilding capacity, and hence, our economy (*Omsa, 2005. p.23*).

2.14.1c Monetary, Fiscal and Financial Policies:

Richard Sines of IBTCI, in a recent paper titled: *Legal, Regulatory and Institutional Constraints To Nigerian Private Sector Development and Privatization and Suggested Assistance to Remove Them*;__Identifies the need for macroeconomic stabilization, economic regulation and a

conducive business climate as the prerequisite for an effective private sector driven economy. Private investment in Nigeria has not been driven by the stock exchange. So, despite improvement such as the recent computerization of the stock market private investment contribution is sluggish because of a myriad of economic regulatory and institutional constraints that need to be removed or restructured. Chief among these is the inability of the banking sector to provide long term credit for period over 5 years to the private sector and little credit to smaller and medium sized enterprises which could provide more competition to Nigeria's largely non-competitive industries.

The current policy is not suitable for Maritime Financing. Maritime Investment has a long gestation period of between 25-30 years. This is a mismatch. Government's fiscal and monetary policies have to be reviewed to encourage long-term lending.

ii Inefficient Judicial system.

The legal and judicial process is a critical component of maritime financing. Investors are not likely to put their money here if financial and business laws are ill defined and the courts not working. The growth of Nigerian private sector is greatly impeded by outdated laws which remain in our statute books eg: Laws on foreign exchange, business permits, corporate taxation, etc. The following are hereby proposed:

- i. Establishment of commercial courts or commercial division in already existing courts to enhance speedy adjudication of commercial disputes
- ii. Judicial sector reform-case flow management
- iii. Greater emphasis on ADR (alternative dispute resolution techniques) in preference to litigation

iii) **Inactive Organised Private Sector**

The organized private sector needs to do more. In the researcher's assessment, the private sector is not proactive. It is clear that no bank can single handedly pool together the huge funds needed to finance investment in the maritime. There is therefore the need to form consortia to raise these funds. It is also hoped that with the recapitalization, the Nigerian banking sector may be able to fund some of these maritime ventures.

2.14.2i Enhancing Local Content in Marine and Shipping Services.

In Nigeria, a presidential task-force known as the Nigerian National Petroleum Corporation (NNPC) Working Committee on shipping and marine services has been set up under the auspices of the NNPC to come up with an ideal blue-print that will facilitate the development and immediate implementation of a framework of government policies to encourage the growth of the "Nigerian Content" in the shipping and marine services of the oil and gas industry in this country.

The Federal Government's goal is to reach a target of at least 45 percent Nigerian content by the end of the year 2006 and 70 percent by the year 2010.

Federal government directives specifically state the following:

- FEED and detailed engineering for all projects are to be domiciled in Nigeria by the end of 2005.
- All fixed (offshore and onshore) platforms to be fabricated in the country to maximize the utilization of local fabrication yards, henceforth, fabrication of all piles, anchors, buoys, jackets, bridges, flare booms and similar structures are to be fabricated in Nigeria.

Furthermore, in context;

- All FPSO contract packages are to be bidded on the basis of carrying out integration within the country from mid 2006.
- Domestication of all seismic data processing projects should be effective from the end of the year 2005.
- Domestication of all reservoir management studies effective by the end of the year 2005.
- Any clauses that create impediments for and /or exclude participation of local companies should not be included in any ITT.
- Harmonize and apply international code and standards to support utilization of locally manufactured products such as paints, cables, etc. to improve capacity utilization in local industries by the second quarter of 2005.

The reasons behind the latest attempts by the Federal Government to create such reforms are many. Positive and concrete steps have long been overdue. Attempts were made to improve, judging by the previous initiatives, which have apparently failed to demonstrate much improvement in the Nigerian shipping industry.

These 'initiatives' include the followings

- (a) Section 9 of the National Maritime Authority (NMA) Act sets out a target of at least 50% Cargo for national carriers.
- (b) The general condition of sales of Nigerian crude permits NNPC to sell 50 percent of crude on CIF basis by giving 90 days notice.
- (c) June 1997, NNPC/NMA Memorandum proposed to set in place measures to ensure that Nigerian flagged vessels participated in sales of crude.
- (d) Nigerian Shipping Policy Act, 1987 sets a target of 40 percent of Cargo to be carried by Nigerian shippers.
- (e) Commitment on the part of foreign partners to collaborate and enhance their indigenous stakeholders; (there are already such arrangements with 2 or 3 shipping companies where the Norwegians Partners providing opportunities and training with a view to empower their Nigerian partners within a period of 5 years).

Most of the market is obviously dominated by foreign-flagged vessels in contradiction of the cabotage rules. These cabotage rules are being strongly opposed and oppressed by the foreign controller companies who are behaving like mafia unto themselves by trying to bar Nigerian from intruding into what they have come to claim to be their terrain.

There is a sublime manipulation of the rules. For instance, the bidding rules require that a vessel is already owned before one can even bid, therefore, locking out Nigerian interests because Nigerians cannot afford to carrying freight and other have idle investment in vessels, they are usually in use for types of work etc.

Firstly, the situation with coastal shipping is that there are:

- i) 9 coastal tankers in Pipelines Products Marketing Company (PPMC) fleet. Those are completely foreign-flagged.
- ii) The fleet of about 15 tankers servicing the Majors and the Independents are 80 percent foreign-flagged. The Nigerian share of a market estimated at \$100 million a year is only about \$12 million or 12 percent.
- iii) Secondly, the situation with bunkers' supply are:
 - i) Foreign vessels because of the non-issuance of bunkering licenses undertake most of the legal trade in bankers.

- ii) This has forced most of the Nigerian trade to go underground.
- iv) This is approximately a \$250 million market and can earn foreign exchange from countries all across West Africa.

Thirdly, with international shipping;

- i) Although, NNPC is entitled to sell about 60 percent of oil exports on Cost, Insurance and Freight basis, they actually sell on Free on Board (FOB) basis, creating zero Nigerian content.
- ii. Despite the fact that the Nigerian Liquefied Natural Gas (NLNG) owns a large and growing fleet, so-called, indigenization of manning has been very slow, therefore minimizing the multiplier effects of investments in the liquefied natural gas (LNG) fleet on the Nigerian Economy.
- iii. The relatively insignificant refined oil by-products such as low pour. Fuel oil are also sold and shipped on mainly foreign vessels.

The problem continues with marine services as well:

- i) There are hardly any fully functioning docks. The only serious docks are Niger-dock and Starz, while the naval docks are basically under-utilized.
- ii) The docks in Doula, Abidjan and Darkar earn substantial revenues from the Nigerian based fleet.
- iii) The only marine support base is one.

The blame is to be placed on many reasons created by what could be said to be known as the Nigerian factor: This could be any thing from;

- a) The lack of political will to implement previous policies.
- b) Persistent neglect of the Nigerian maritime sector over the years.
- c) Mismanagement of the Nigerian National Shipping Line (NNSL), which provided training grounds for marine skills.
- d) Misuse of previous initiatives such as the defunct Shipbuilding and Acquisition Fund (SBAF) run by the NMA.
- e) Preference of foreign ships for crude and products shipments for non-national reasons (*Maritime Digest No 2 vol. 1, Nigerian Chamber of Shipping Magazine*).

2.14.2ii OBSERVATIONS/RECOMMENDATIONS.

In fact, several recommendations have been brought forward by various stakeholder groups, individual members, other groups within both private sector and government bodies, just as per what the researcher too feels is necessary to help move the maritime industry forward in Nigeria.

A. Regulatory:

- i) Grant automatic certification to Nigerian flagged vessels under the cabotage law regime.
- ii Rigorous enforcement of the cabotage rules by offering “right of first refusal” to Nigerian

flagged vessels for both coastal and international trade.

- iii Rely on a rigorous classification regime bodies such as American Bureau of Shipping (ABS) Bureau Veritas (BV), Det Norske Veritas (DNV) etc. for determining the suitability of the vessels rather than the arbitrary 15 years rules since the age of a vessel is not always the best indicator of its state.
- iv. Permit owners of national flagged vessel to bid for work without first owning the vessel against say 2 percent performance bound.
- v. Streamline and expedite implementation of requirements for the flagging of Nigerian vessels to ensure efficient registration of Nigerian vessels by cutting down on the bureaucratic activities and adequate funding of NMA.

B. Fiscal:

- i) Exempt charter fee from 10 percent withholding tax, since this presumes a profit margin of 33.5 percent which is not always the case.
- ii) Reduce the import duty on “small” vessels (carried on board other vessels) to a flat 2.5 percent rather than duties etc. that currently amount to over 20 percent.
- iii) Exempt large vessels, which come in on their own steam from import duties as most foreign ships are

on a temporary import and pay no duties to provide a level playing field.

- iv) Exempt income from international shipping on Nigerian flagged vessels from tax, as is done in Singapore.

C. General:

- i) Re-establish the NSAF by lending money to banks for onward lending to shipping companies on commercial terms.
- ii) Enhance capacity building by funding the National Maritime Institute at Oron properly.

D. Coastal Shipping

- i) Adopt very aggressive policy on foreign flagged vessels once available to ensure that Nigerian shipping companies have the exclusive right to all transportation of petroleum liquids within Nigerian coastal water.
- ii) Encourage locals with term charters rather than voyage charters so that the risk on non-use, because of unavailability of products is borne by PPMC rather than vessel owners. This will increase local value added from \$12million to over \$60million a year.

E. International shipping:

- i) Give directives to oil traders/third party buyers to give first right of refusal to vessels owned by Nigerian owned companies.

- ii) Encourage the participation of foreign shipping companies through collaborative ventures with Nigerian companies and encourage skills transfer.
- iii) Encourage the use of Nigerian flagged vessels by issuing say for example 15 years letter of intent or contracts to willing and capable Nigerian companies to facilitate the acquisition of Nigerian-owned tankers and LNG vessels.
- iv) Nigerian shipping companies should be given priority in the transportation of technical aid/bilateral and African regional petroleum cargo

F. Bunkers:

- i) Issue bunkering licenses to credible Nigerian companies
- ii) This will encourage legitimate investment in legal bunkering rather than the use of bunkering vessel for criminal activities
- iii) Allocate products officially to the licensed bunkers to enable them to function effectively. This will decriminalize bunkering.

The implementation strategy in international shipping has been considered thus:

- i) NMA/NNPC to clarify requirement for shipping companies to participate and pre-qualify companies.
- ii) Final decision on the basis of competitive bidding among pre-qualified companies.
- iii) Develop a Petroleum Cargo Support Scheme to facilitate the development of Nigerian shipping companies to participate in identified market segments.

Possible criteria for accrediting shippers for crude exports:

- a) Adequate insurance cover for the hull and machinery and P & I cover for the cargo.
- b) Joint Venture with reputable foreign shipper facilitating access to suitable vessels. Within 3 years, this is to be amended to include ownership of at least one suitable vessel.
- c) Individual Companies/Consortia to be properly organised to minimise “Keyman” risk.

G. Risks and Mitigates

1. Vessel Standard Risk

NMA is to ensure that all vessels current Safety of Life at Sea (SOLAS), and environmental pollution guidelines such as “double hull’s maintenance of class etc. This will ensure that accredited vessels are complaint with laws such as the US oil Pollution Act.

2. Technical Capacity Risk

Capacity does exist locally. Where there are gaps, this could be bridged in the short-term by joint ventures with credible international companies.

3. Cargo Loss Risk:

Cargo Loss/P x I insurance through internationally acceptable parties will ensure that the nation’s crude revenues are not endangered. Shipping companies will arrange suitable insurance to ensure that cargo is safeguarded.

4. Loss of Revenue to Federation Account

The cost, Insurance and Freight (CIF) Contract will require payment to the Federation Account on presentation of original Clean Shipped Tanker Bill of Lading.

5. Lien on Cargo
6. Under international Shipping Practice, once goods are shipped on board, a “Common Carrier” the seller’s liability ceases, so creditors cannot place a lien on the cargo of crude for debts owed by Nigeria. This is more so when shipping companies are private and not government owned, as was the tanker’s manifold flanges.

In conclusion, the benefits of the proposal could do nothing but good to the Nigerian Economy:

1. Substantial amounts will accrue to the economy/country in freight earnings from both local and international trade. This is estimated at between \$800 million and \$1.2 billion per annum.
2. Development of Nigeria’s tanker fleet associated with transfer of technology.
3. Provision of ready and available tanker fleet providing strategic control over the direction of the oil trade and assuming national security in times of blockades, regional conflicts, etc.
4. Empowerment generation and training for restive youths. (*Maritime Digest No 2 vol.1, Nigerian Chamber of Shipping Magazine*).

2.14.2iii Practical Examples of Countries That Promote Local Content In Oil And Gas.

1. BRAZIL

Fifth upstream bidding round, held in March 2003, upstream participants required to provide a minimum of 30 percent local content and service in bids for offshore licenses and 70 percent for onshore Weightings given to the factors determining the winning bid.

- Before: Bonus offered over minimum price for block 85 percent
 - Now: Local content 15 percent Now: Local content and services 40 percent, Bonus 30 percent
- Minimum exploratory programme 30 percent

ii) CANADA

Canada Oil and Gas Operations Act 1998

- Employment of Canadians and use of Canadians goods and services.
- Before authorizing any work or activity under paragraph (1) (b) the National Energy Board shall require the submission of a plan satisfactory to the National Energy Board for the employment of Canadian manufacturers, consultants, contractors and services companies with a full and fair opportunity to participate on a competitive basis in the supply of goods and services used in that work or activity
- Affirmative action programs

The National Energy Board may require that any plan submitted pursuant to subsection (2) include provision to ensure that disadvantaged individual or group have access to training and employment opportunities and to enable

those individuals or groups or corporations owned or co-operatives operated by them to participate in the supply of goods and services in the work program for which the plan was submitted

iii) THE UNITED KINGDOM

Supply chain code for Practice:

- Supply Chain Champion: To secure more efficient, less adversarial contracting practice, identified individual operators, major contractors and suppliers senior enough to make his/her management directly aware of related issues and to act as the point of contact for any company that feels its treatment is at odds with the stated policy for the customers.

iv) WESTERN AUSTRALIA

- Existing Western Australia practice in state agreement eg. North West Gas Development (Woodside) Agreement Act 1979, with joint ventures obliged to:
 - a. Employ local expertise and labour
 - b. Give local enterprises reasonable opportunities to tender or quote.
 - c. Where possible, give preference to local enterprises where price, quality, delivery and services equal to or better than what is elsewhere

- d. All “so far as reasonably and economically practicable”
- e. To ensure that our own contractions respect same obligations.
- f. Report to Minister when requested.

Also, it is interesting to note that Singapore, a country smaller than Lagos generates so much income from shipping alone, possibly more than what Nigerian gets from oil, to show you how much revenue can be generated from shipping to improve our economy.

As a result of the regular and rather intense meetings of the “NNPC sub-committee on shipping and marine service” key questions have been asked and answered;

1. What have been the key reasons for low achievement of Nigerian content implementation within the maritime industry sub-group to date?
 - a) Lack of political will to implement relevant provisions of United Nations Conference on Trade and Development (UNCTAD), Directives on Shipping cabotage Act, Shipping Policy Act and NMA Act.
 - b) Unwillingness to grant local shipping companies meaningful say (10-15 years) contract that will facilitate vessel acquisition.
 - c) Personal interest of key functionaries in retaining the status quo of foreign shippers dominating the market.
2. What are the 4 major initiatives that should be taken to achieve Federal Government directive for maritime

industry? a) Enforcement of the relevant law, National Maritime Authority Act, Cabotage Act, Nigerian Content Consultative Forum Industry Sub-committee Break Out Sessions Shipping Services Sub-committee April 2005.

- b) Granting Nigerian flagged vessels/shippers the first option on all available cargoes.
 - c) Resuscitation of Shipbuilding and Acquisition Fund routing the money through Central Bank of Nigeria (CBN) and the bank to ensure that only credible users can access the funds
 - d) Implementing shipping friendly fiscal policies such as waivers of import duties, tax exemptions on international shipping income and waiver of with-holding taxes on charter party fees.
3. List the three major dependencies that would determine the successful achievement of asset target.
- a) Diligent implementation of government initiative on shipping such as the Cabotage Act, UNCTAD directives and NNA Act.
 - b) Urgent resuscitation of the Shipbuilding and Acquisition Fund with the banks taking the credit risk on the drawing from the fund.
 - c) Encourage transparency in the placement of all freight contracts for the oil and gas industry.

Other strongly voiced re-commendations that could well tighten the Nigerian content implementation tactic is the local-flagging of a great majority of vessels on Nigerian waters. Thus, improving an obligation on manning, Nigerian-flagged

vessels are of advantage to the economy, because the conditions attached include things like the provision of employment to Nigerians. Incorporating an employment law clause (similar to that in UK Immigration Law), that would only employ foreigners if after proof of extensive nationwide advertising no Nigerian expert in a particular field was found to be able to perform a particular job description.

Another proviso could be also to ensure that only Nigerian equipment is used, unless, again none could be found to be manufactured in the country and we were forced to import same. This led to the further recommendation that there should be a pressure group that will ensure compliance with the law, a strong monitoring body such as a Joint Committee of NMA, NNPC, and the private sector. They should each provide a designated monitoring team to work together (*Maritime Digest No 2 vol. 1 - Nigerian Chamber of shipping magazine*).

2.14.3 What are The Four Main Requirement to be Fulfilled By A Shipping Company In Order To Have Its Vessel Registered For Participation In Nigerian Cabotage Trade?

According to the coastal and inland shipping (cabotage) Act, 2003, the vessel must be

- (1) Wholly-owned by Nigerians and
- (2) Wholly crewed by Nigerians
- (3) Built in Nigeria and
- (4) Registered in Nigeria, but if it is a foreign-owned vessels, it must also obtain a restricted license from the Minister of

Transport through an application filed by an agent resident in Nigeria.

2.15.0 CONCESSIONS:

Concessioning is one of the schemes of privatization. Privatization itself implies the transfer of ownership or operating and development rights with their associated risks from the public to the private sector. It assigns to the state, roles of regulations and strengthening of social protection. Broadly speaking, privatization has two main components; divestiture and non-divestiture options.

Divestiture privatization involves the sale of all or part of the ownership of a public business to private investors. Non-divestiture privatization involves transfer of operational development or exploitation rights with its risks from the public to the private sector (*Paper Titled: Concessioning; Easing Obstacles to private sector for growth, presented by the Managing Director, Nigerian Ports Authority, Chief A.B. Sarumi, at the Lagos Business School, Maritime Conference; December 2005*).

Sometimes, non-divestiture options are preludes to divestiture. The focus here is in restructuring, fostering efficiency through competition and enabling public enterprises operate like private companies. The classification of schemes employed under these two broad categories of privatization as are given below will help expantiate more.

DIVESTITURE	NON-DIVESTITURE
Direct Sale Auction Management Buyouts Employee Buyout Private placement Public Share Offering Joint ventures Liquidation Debt/Equity Swap Mass/Voucher Privatization	Restructuring Commercialization & Corporatization Contracting out: Management and service contracts. Leases and Concession Public, Private Partnerships

Concession: - These are long lease contracts in which operating, developing or exploitation rights are transferred from public authorities to an individual or group, private firm or a consortium. The main difference between a lease and a concession is that, the lessee may have to maintain and service the leased assets, while a concessionaire has responsibility for capital expenditure and investment. Consequently, from the public sector point of view, concessions are preferred to leases. *(Paper presented by Chief A. B. Sarumi, MD & CEO NPA, at the Lagos Business School, Maritime Conference, Dec.12, 2005).*

Concessions can focus as improving efficiency (transfer of operations rights) or expanding existing facility and developing new ones (transfer of development right). If the focus is on the latter, concessions can take the form of schemes like;

- Build, Operate and Transport (BOT)

- Build, Own and Operate (BOO)
- Build, Own, Operate and Transfer (BOOT).

In each of these cases, the public authority allows private investors to develop and operate mainly infrastructure facilities, which may or may not be transferred back to government after a certain period. The last two schemes have been used extensively in USA, Malaysia and Turkey for Telecommunications, Construction and other infrastructural projects. The main challenges with these schemes are their cost and complexity in managing the arrangements.

According to Sarumi, Concessions are popular and unique because, they are convenient vehicles for establishing a mutually beneficial partnership of the public and private sectors. While fostering efficiency, concessions also ensure that public property/infrastructure is not alienated from the state thereby, mitigating hostilities and resistance to privatization.

It is important to note that, prior to the emergence of concessions, most state enterprises were owned, operated and regulated public enterprises. Concessions revised roles and allocated them to enable a healthy and fairer partnership with the private sector. Operational rights are transferred to private sector and even though the ownership and regulations could be done by public authorities, it is the same establishment that does them.

Concessioning: The design and implementation of a concessioning process starts with setting out the broad objectives. The set objectives influence the method to use. Concessions are generally driven by the following objectives:

- Increase economic efficiency
- Obtain budgetary relief
- Increase competition
- Broaden Consumer choice
- Enable private sector driven economy
- Develop capital markets (*Sarumi, 2005*)

2.15.1 Port Concession is Another Form of Colonialism

In June, 2005, the President of the National Council of Managing Directors of Licensed Customs Agents, Mr. Lucky Amiwero, petitioned the President of the Federal Republic of Nigeria, over the things that were going wrong at the ports. According to him, what led him to the petitioning of the President was when things were not done properly.

He opined that, as a member of some of the Presidential Committees, if things were not done well, they have to quarrel with the government for the future of the country, and for the betterment of effective and efficient well managed ports.

Mr. Amiwero was of the view that the government has not addressed problems areas:

To him, Section 7C, of the Port Act of 1999, gives the port to the public and that is why it is called the Nigerian Ports Authority (NPA) and not the Nigeria Ports. So, it is now a public domain, which means it has been given to the society.

If the President would wish to privatize the ports, he has to 'Castrate' it to come in with a new process. There is no surgical approach to the legal system. They are still using the old law to bring in a new structure into the system.

Again, section 32 confers authority to the NPA in terms of labour, Section 8 and others are for the throughput. So, those areas are very fundamental, especially on throughput, which is under the regulation of Nigerian Port, amongst others. He therefore, demanded to know "Under what law are they concessioning the Port?" There is no concession in the Nigerian ports law. What is obtained there in the law is lease. And that lease is only concerned with land.

To him what Nigeria is concessioning is labour, throughput tariff, and equipment. But that these things are not in the Nigerian law. It would have been preferable to evolve new laws and send to the National Assembly for amendments before bringing in concession. Most probably, the national assembly might settle on joint venture as it is practicable in other places around the world. By concessioning the ports, most workers will lose their jobs even in this present situation of social-economic downturn. Moreover, the throughput will also be concessioned. The concessionaire has the right not to give any consignment to the bonded warehouses. So, jobs will be lost there at the NPA. Countries like India; after 130 years of their ports existence, they still maintain their laws. China went into joint venture whereas Singapore has gone into

corporatization, and they are using their staff. South African also went into corporatisation.

In South Africa, in 2001, they unbundled their law, and came up with two laws. The National Port Authority Operations, which handles the technical operations. He then looked at the situation in Nigeria as a professional and with other experts on the basis of the social-economic and the operational managerial aspect. They have been trying to see how these things will affect the country.

As at June, 2005, 2000 workers were already sacked. There is what is called Port Workers Development Programme (PDP) that was organized by International Labour Organization in conjunction with any country that is going on port reforms. Uruguay, for instance, has a four year programme. Argentina has a 23 year programme. They have started training on how to feedback people they have recruited on the managerial level, middle and lower levels on the handling of containers and other things in terms of ports operations, before the concessioning process was introduced. But here, nothing has been done about labour, and they have already started sacking. They are only paving ways of breeding armed robbers, he contended.

The fear is that, as Nigeria is giving 25 years concession to these foreign companies, it means for those numbers of years, Nigerians will not have any experience of port operation. This will certainly affect our economy.

Fear of monopoly: AP Moller is from Denmark and their name appears on most of the terminals for concession. The question is why are South African ports not concessioned? Why are Singaporean, American and Malaysian ports not concessioned to foreigner? What they do is to transfer from government to government. America has about 31 operating ports. The foreigners who are coming to handle our terminals have been able to turn their own port around, to suit their own environmental conditions. But for us, we are selling our ports for the next 25 years for white men to run them, which is another form of colonialism. What we are supposed to do is to go into joint venture or corporatization as it is done in South Africa and other maritime nations.

2.15.2 Port Concession Will Lead To Hike In Charges and Cause Inflation.

The issue of concessioning is a welcome idea in this part of the globe. Our ports have over the years been operating in a low standard, in terms of international performance. But with the current on-going port reforms, government should remove the management of the port from the hands of the public and transfer it to the hands of the private sector. However, we are concerned in the way and manner the government is doing it, most especially when the issue is going in favour of the firms that have dominated. Concessioning is in two ways, The

Build, Operate and Transfer (BOT) and Lease, Operate and Transfer (LOT). The BOT means that the concessionaire will have to build and bring in the necessary infrastructure in order to boost the terminal that is allocated to him.

But one major problem with the BOT in this part of the globe is the number of years involved. BOT is a welcome idea, but how do we guarantee the safety and security of the port in terms of the length of time given to the concessionaire? For example, at the container terminal port, where Maersk line and AP Moller got part of the terminal, at \$1.6 billion, the question that comes to mind is, what is actually the security guarantee of that part of the terminal that is concessioned? What is going to be the implication to the economic survival of our nation in terms of security guarantee?

A country that wants to grow is anchored on the performance of its operational modalities at the port system. But the type of money we have seen in the sale of the containers terminal to Maersk line does justify the exercise because, at that price it means that we have been able to sell the conscience of this country, in the sense that the concessionaire will make sure that it recoups the money at a short possible end, without considering the societal and the multiple effects it would have on the operational modalities of the port. That could ridicule the issue of tariff that has over the years not been reviewed until 2001, where we have the simplified system. And there is the likelihood that port tariff would not come down, even when the port is concessioned.

If one examines very critically, one will discover that the tariff system in Nigeria is still higher than that of the West and Central African sub-region. And when we are selling our ports at this particular high rate to the concessionaire it means that the tariff will be higher than what it is today, it also means that the goods will be sold at a very exorbitant rate to the consumer because the importers will have to pay higher more than what we see today. It would be far more than what Nigerian Ports Authority (NPA) is currently charging.

One of the major problems of the ports is apparent government interference in terms of inconsistency in policies in the running of the ports. For example, the port congestion of 2001 was caused by government inconsistent policy. Moreover, undue interference has affected the operational and the functionality of the port system in recent times. But with the port reforms by which NMA will play a landlord role, their functions will be limited as regards to interference with the operations. "In fact, I am of the opinion that we should concession the port rather than privatize it," Amiwero continued. This is because total privatization may not augur well with the economic survival of the nation.

We are also advocating that those involved in the concessioning exercise should give it a human face. Moreover, let the local shipping companies be given a chance to participate in what belongs to them. Because, if we end up giving it out to only foreigners, it means that we have not done anything but have sold the rights of the shipping companies to

the foreigners, who have been dominating our maritime industry all this while.

The developed ports are concessioned because it is a globalized thing. In United States of America, Australia and other advanced economies, what they did was to give the ports out to their own people. But in Nigeria, because of the level of development we have over the years, the changing of our policy, to really affect local operators, has been a very difficult thing. Moreso, the capital-intensive nature of shipping activities has affected our development. The local operators have not been able to mop enough capital to run shipping companies as it is supposed to be. So, if we think that we should make it function, in a way and manner that will favour us, we should design a system in which the money meant for acquiring the terminals should be lower to give room for the indigenous shipping companies.

2.15.2a Sacked workers: - It is quite unfortunate that some workers have been sacked, because in the history of concession, such activity is not prominent. The way it is done in the advanced countries, the law always reflects the issue of loss of job. If one looks at the reforms that took place in the Nigerian Tele-communications, there was no loss of job. It was done in a way that the workers still retained their jobs.

The government was consistently warned about the management of the NPA to be careful in the laying off of workers in the reforms. In fact, it was said that, they have not

really done well by sacking 2,000 workers. If the exercise was done in good faith, then, there should have been a compromise in which those who get terminals would reabsorb the sacked workers. But the way it was done, it shows it was not done in good faith, most especially as nothing was paid to those that were sacked. So, let the NPA as a matter of policy, resolve this problem of the sacked workers and ensure that they hold meetings with the terminal operators in order to engage the skilled ones.

The government should set up a regulatory body that should checkmate the excesses of these terminal operators. This is because, if we are selling the terminals to the foreigners, without a backup law, it means that the exercise would be illegal and the regulatory body would not have power to control the operators. If they are not monitored, it means we are giving them free hand to operate. There are indications that, there is a Nigerian Transport Commission Bill 2005 that may soon come up. So, one urges that the Bill be passed by the National Assembly to give the concession a legal backing, otherwise the whole exercise will be futile.

The exercise going on is based on BOT and not LOT. But, if it is based on LOT, it means that the exercise is futile. What one sees today is that, 80 percent of the equipment at the ports is idle, and that has brought low productivity. It has created vessel delay time, which makes the owners of vessels not to berth at the ports. It has created a lot of inefficiency in the system. If at the end of the day the concession did not allow

the operators to bring in new equipments and technology, make it user and investor friendly, lift up the level of our port system and become the central hub in the West and Central African sub-region it means that we have not succeeded in improving the ports.

In relation to the problems of goods clearing, freight forwarding is a very complex business which is affected by so many factors at the ports, such as the multiplicity of agencies. Most of them hide under the cover of receiving letters from the Presidency. The law which says that the agencies involved in cargo examination should be called up is not being observed, even at the detriment of NPA's business. This negligence of the law has resulted in the delay of cargo clearance for about seven to ten days; and the cost is usually passed to the consumers.

The dilapidated state of our roads and high cost involved in the carriage of goods, contribute immensely to the logistics problems we have in Nigeria. This also adds to the cost of individual items in the market. Again, the absence of inter modality in the maritime sector has been a big problem. Sometimes one gets worried how the inland container depots (ICD's) in the geo-political zones will take off without good railway system. One thinks government, if possible, should concession that sector to eliminate hiccups in the logistics and improve productivity in the country (*Obed Ndikan, maintenance expert, Businessday, 16th June, 2005 p. 13B*).

2.15.3 Basic Legal Requirements

- Review and adaptation of relevant laws
- Enact an enabling law
- Establish property or ownership rights and an effective judicial system for enforcement
- Corporatize public enterprises to be concessioned, establishing rights and liabilities.
- Establish a regulatory framework for enforcing regulations and promoting competition
- Foreign investment laws

2.14.4 Obstacles to Private Sector Growth

In countries where public enterprises are still run by the state, we have a situation where the public authority is the owner of business, operator and regulator. A study of the Nigerian port sector concluded that such arrangements stifle the growth of the private sector:

- Weak financial institutions and capital markets
- Unwillingness of financial institutions to grant long term lending
- Absence of or poor legal regime to adequately protect contracting parties and ensure enforcement of laws speedily.
- Aversion of small private investors to mergers. Most private operators prefer to go it alone as a result it is unable to pool adequate resources for big projects.
- The absence of a strong and independent regulatory framework can also be a hindrance to private sector growth.

2.15.5 Easing the Obstacles

Enterprises/infrastructure to be concessioned are to be clearly unbundled and have roles revised in such a way that a level playing ground is created and no restrictions are imposed on any party. Regulations must therefore be separated from operations and ownership.

- There is need to have a strong and independent regulator to curb monopoly, unfair economic practices and handle arbitration judiciously and speedily.
- The capital market must be deepened, strengthened and required (through a deliberate policy) to avoid investors long-term lending.
- Investors must not only be willing to merge, they must also seek partnerships with foreign investors.
- Concessioning programmes must also give priority attention to enacting new laws and policies to support the types of economic reforms intended. This will also ensure investor comfort.
- The entire transactions process need to attain an acceptable level of transparency to create confidence in the investors.
- This will attract reputable bidders and produce good results (*Paper Titled: Concessioning; Easing Obstacles to Private Sector Growth; Presented by the Managing Director, NPA at the Lagos Business School, December 2005*).

2.16.0 FOR CABOTAGE TO WORK

The most radical development in the Nigerian maritime industry in the last couple of years is the enactment of the Coastal and Inland Shipping Act of 2003, better known as the Cabotage Law. Though, the Obasanjo administration assented to the Bill on April 30, 2003, the new law came into operation a year later. Still, it is more appropriate to speak of the law becoming operational on May 1st, 2004, when the Minister of Transport issued a comprehensive guideline on the operation of the Cabotage Act.

The essence of the new law is to ensure that every passenger or Cargo vessel moving from any Nigerian port to another Nigerian port is as much as possible built, owned and operated by Nigerian individuals, as opposed to corporate citizens who could well be a foreign company operating here.

The Nigerian 2003 Cabotage law can be said to have six key objectives according to Mr. Bart Nnaji. These are to radically enhance indigenous capital formation in maritime business; to transfer technology and technical skills to Nigerians; to drastically improve our people's maritime management skills; to create far greater jobs for Nigerians in the industry; to improve our national finances, especially as regards foreign exchange conservation; and to enable Nigerians and government to have greater control over our national Maritime security.

The operation of the Cabotage Act since May 2004, has, however, not been wonderful because of mostly unavoidable

reasons. For example, the radical changes which the law seeks to bring about cannot be achieved overnight or even in a year or two. Hence, the Ministry of Transport has been constrained to grant licenses and waivers to foreign vessels operating from one Nigerian port to another. These waivers are well provided for in the 2003 Coastal and Inland Shipping Law. Such provisions have led some analysts to describe the new Maritime Act as “a liberal Cabotage Law”.

Still, the ability of the Nigerian Maritime authorities to grapple admirably with the challenge of the cabotage law cannot be questioned. The National Maritime Authority (NMA) which with the operation of the new maritime regime has the right men to provide the necessary vision and leadership. The on-going digitalization of NMA’s operations, beginning with the ship registration process, is bound to have salutary effect on the entire industry.

All the same, no less impression is the infectious enthusiasm with which the Cabotage Vessel Financing Fund, a vital aspect of the Cabotage Act, is being pursued. In this connection, the Malaysian Group, AFFCOM Corporation, is being encouraged to go ahead with the planned investment of up to \$1 billion in Nigerian indigenous ship ownership, ship building and ship management. The Malaysians are providing, under this arrangement 85 percent of the credit of the cost of any ship a Nigerian or group of Nigerians want to acquire. The Nigerian ship investor(s) will also enjoy a 39-month

moratorium, and the interest rate for a whole 10 years will be less than 10 percent.

What the Nigerian Maritime Authorities also need is perhaps more than any other thing to succeed in operating the cabotage law is political support. The stunning success which the National Agency for Food and Drug Administration and Control (NAFDAC) has recorded since April, 2001, derive from other critical success factors, tremendous support it has received from not just the Federal Ministry of Health, but also the Presidency, the National Assembly, the Civil Society, the media and the general public.

It is believed that, if the same level of support is extended to the maritime industry, the result will be marvelous.

We live in an increasingly inter-dependent world. We saw how the NMA search and Rescue helicopter were mobilized when the Bellview plane tragedy of October 22, 2005 occurred; and there are some reports which attribute the location of the site of the crash at Lisa in Ogun state to the NMA helicopter.

And talking of an increasingly interdependent world, it is noted that an appropriately supported National Maritime Authority will also impact positively on the Niger Delta, for example. One critical reason for the restrictiveness in this economically strategic place is the degradation of its environment, especially its waters as a result of oil production. The environmental degradation will be controlled considerably

when the NMA starts the implementation of the new Federal Government Policy on Maritime pollution.

In fact, a successful implementation of the Coastal and Inland shipping Act of 2003 is a national issue whose time has come. It is a desideratum; the Cabotage Law holds an exciting prospect for our national stability and economic growth. *(These remarks were made by Bart Nnaji, former Minister of Science and Technology – BusinessDay Newspaper, November 30, 2005 p.15).*

2.17.0 THE NEED FOR A MARITIME RESEARCH AND LEARNING CENTRE:

The establishment of Research Institutions in Nigeria dates back to pre-independence era. Some of such institutions were established to conduct extensive research and make such outcome available to government for decision making. For example, Nigerian Institute of Social and Economic Research (NISER) based in Ibadan was established 53 years ago to conduct research in the areas of social and economic matters in Nigeria and to make such socio-economic policy findings available to government to facilitate decision making in such areas.

Again, the Nigeria Institute of International Affairs (NIIA) was established over 40 years ago to cater for issues on international policy and relations about government and to make available such research findings to the government to

assist in policy decision – making in the area of international relations.

The Nigerian Institute of Policy and Strategic studies based in Kuru was established in 1977 to conduct research in strategic areas of government and also to act as learning center for top government functionaries so as to update their knowledge. Of significance to the institute as research focus is the area of defence and security.

The above research institutions have been established to act as problem-solving establishments through the pursuance of research activities in identified key areas affecting general sustainability of the Nigerian Economy and Development.

In other words, governments all over the world have recognized the likelihood of human resources and manpower inadequacy in some specific areas. As a result of the deficiencies or inadequacies, decision making over some issues may be inconclusive, lopsided or counter-productive. Hence, it has become imperative for government to establish customized research and learning institutions in numerous areas of concern to provide the much needed information for decision making.

However, research and learning centers worldwide do not wait for government to request for research to be carried out, they are also expected to anticipate and subsequently initiate research capable of being useful to government. In essence,

research and learning centers is a two-way relationship with government.

By implication, such research and learning centers are to act as think-tank units for the government on matters concerning their research focus.

As the case may be, the importance of maritime transport industry in the Nigerian economy is undeniably very great. The Nigerian economy depends, to a greater extent, on the exportation of crude oil and agro-based products and in return imports industrial and manufacturing equipments. The Nigerian economy nevertheless, relies solely on international trade. Shipping is central to the success of any international business, particularly where the separating physical distance is a constraint. The nature of the country's economy seems to account for why the maritime sector can be described as the shaker and mover of the Nigerian economy (*Asoluka; 2003 p. 272*).

Given the potentialities of the Nigerian maritime sector, it creates an endless list of job opportunities, serve as avenue for revenue generation, and promotes trade and commerce. It can also accelerate urbanization as well as infrastructural expansion. The maritime sector can also encourage, as the establishment of institutional development and growth such as NMA, NPA, and NSC etc.

In addition, it can also promote international relations and cooperation, particularly through membership of similar organizations in other countries in related international business. It has indeed made it possible to acquire membership of International Maritime Organisation such as I.M.O.,WTO, etc.

Despite the overwhelming dominance of the maritime industry on the Nigerian economy, the country has not been able to sustain the industry by solving its associated problems. The demise of shipping companies, absence of indigenous participation in vital maritime areas, port development problems, congestions, policy issues and weak participation in international conventions as they may affect Nigerian maritime are common experience. As a result, the maritime sector may be described as underdeveloped.

The survey conducted on human resources and manpower development situation of the maritime sector suggested the need to pursue aggressively and consciously manpower development programme for the maritime sector. As revealed by the survey, the major problems associated with the Nigerian Maritime Sector which probably account for the underdevelopment of the industry are the lopsidedness, incompetence and inadequacies associated with the manpower situation in the maritime sector, some of the major problems associated with the industry would have been resolved locally and that would also serve as a strong

preparatory ground for international participation and negotiation over maritime related issues.

To pursue the manpower development objectives of the Maritime sector, the involvement of the NMA is to establish an adequately funded, managed and organized Maritime Research and Learning Centre (M.R.L.C.). It is through the establishment and creation of an M.R.L.C. that better focused maritime related issues can be researched into, analyzed and presented to government to implement as policy measures.

It is quite important to stress that other sectors of the economy such as Agriculture, Education, Health, Petroleum, e.tc. have been assigned various forms of research institutions to respond by providing in-depth information and knowledge to their emerging problems. But Nigerian maritime sector is yet to be accorded in any form a strong, customized problem-solving research and learning center in the country. It is surprising that given the positive impacts through employment opportunities, revenue generation, trade and commerce promotion, international trade, international relations, etc, which the maritime sector exerts on the Nigerian economic space, it is yet to be assigned a research and learning center, capable of intensifying further knowledge, understanding and appreciation of the problems of the maritime sector of the economy.

It is surprising that with the congestion problem of 1976, container revolution of the early 1980's, dynamisms in

international maritime regulations and rules especially on maritime pollution, the collapse of the Nigerian National Shipping Line (NNSL), the general ineffectiveness of the National Shipping Policy and the difficulty experienced in the placement of graduates from Maritime Academy of Nigeria, Oron, there exists no institutional set-up capable of accounting for the causal factors, and provide remedies capable of containing these myriads of emerging problems.

In fact, it is the general absence of research that seems to be responsible for the level of lopsidedness and inconsistencies that prevail in the Nigeria maritime sector. Some efforts have been made to ensure general sustainability of the Nigerian Maritime sector through human resource development and learning centers. The major significant institution of maritime orientation in Nigeria is the Maritime Academy of Nigeria, Oron.

This academy was formally known as Nautical College of Nigeria and was established in 1977. The responsibility of the Academy is to admit and train the various levels of personnel required for running and operating ships of the merchant navy. In addition, it is to train technical manpower for maritime engineering, piloting and navigation. Given these objectives, the Academy offers various regular and short study programmes through its various departments.

At the international level, Maritime Research and Learning Centres (M.R.L.C.) have been established recently. In the

United States of America, there exists an institution known as Maritime Administration (MARAD) whose principal objective is to promote the development and maintenance of adequate, well balanced United States Merchant Marine, sufficient to carry the nation's domestic water-borne commerce and a substantial portion of its water-borne foreign commerce. In addition, it has a strategic role of being capable of serving as a naval military auxiliary in time of war or national emergency.

MARAD enjoys adequate ship-building and repair services efficient ports, and effective intermodal water and inland transportation systems. MARAD is under the US Department of Transportation, which oversees through adequate monitoring, coordination and funding, its various activities in the area of maritime transportation. MARAD is similar to the Maritime Services Department of the Nigeria's Federal Ministry of Transport, though, with varying powers, functions and responsibilities.

In 1994, the MARAD established a resourceful National Maritime Resource and Education Centre (NMREC), to assist the U.S. shipbuilding, ship repair, owner/operators and marine suppliers in improving their international competitiveness. Also, it was to provide a resource base capable of assisting government in the area of decision-making. It therefore advises and assists the Secretary of Transport on commercial maritime matters, the U.S. maritime industry and strategic sealift.

2.17.1 Justification for the Maritime Research and Learning Centre.

Apart from the issues mentioned above about the global trend in the establishment of MRLC, there is a need to provide further justification for a center in Nigeria.

One sector of the economy of Nigeria that has not been adequately provided with a research and learning center is the Nigerian maritime sector. The attendant positive contributions of the maritime sector to the Nigerian economy or the negative consequences when not properly harnessed provide enough rationalities and reasons for the establishment of an MRLC whose major responsibility is to secure through research, the future of the nation's maritime sector. It is quite obvious that the human resource base and manpower development situation of the industry is weak, lopsided and outdated.

There is a need to improve on the human resources situation. These can be better achieved through Maritime Research Learning Centre. Besides, most policies on shipping and maritime related matters, as well as port reforms have attracted strong criticisms from stakeholders and international communities. Such criticisms show that adequate empirical investigation through research might not have been coordinated. With an MRLC in place, such controversies would have been easily avoided through research studies and findings disseminated to the stake holders for proper decision-making

In the absence of an MRLC, it is obvious that major maritime related issues cannot be coordinated, monitored and stored. More importantly, they cannot be made available to government for policy decision making. No wonder the existing information and data base about maritime transportation in Nigeria are disjointed.

Finally, there are myriads of problems associated with maritime sector, such as the weakness of the National Shipping Policy, the problem of ship finance, cargo sharing dilemma, port congestion, indigenous shipping, problems of indigenous crude oil lifting, maritime pollution, intermodal transport deficiencies, maritime technology dynamics and international maritime policies, etc. These cannot be fully handled with existing institutions on ground without the establishment of a functional, well-staffed and funded Maritime Research and Learning Centre. It is against this background that it is suggested that a maritime Research and Learning Centre be earnestly be established.

2.17.2 Aims and Objectives

If a maritime Research and Learning Centre is established, its broad objectives are expected to be as highlighted below:

- (i) To undertake research in maritime related activities with a view to enhancing national capacity for maritime development.

- (ii) To develop and maintain an analytical support system that facilitates maritime research and shipping policy issues seen from socio-economic, technology, international and environmental perspectives.
- (iii) To organize training, induction and outreach programmes that will enhance the upgrading of skills and human resources, so that personnel from all sectors of the maritime industry can participate effectively in the development process.
- (iv) Provide information and adequate database that would help different categories of stakeholders, policy participants and decision makers in better evaluation of maritime policy issues and subsequently increasing public understanding of the issues.
- (v). To promote serious shipping discussions of policy issues among various stakeholders of the industry.
- (vi) To offer strong consultancy services on maritime matters to the public and private sectors as well as to the international maritime organizations, multilateral and bilateral agencies.
- (vii) To contribute to the development of efficient human resources and manpower requirements of the maritime industry.
- (viii) To establish educational maritime institutions with a functional maritime library and other enabling infrastructural facilities capable of providing workshops, lecture halls, meeting rooms, computer services, search and rescue facilities, laboratories, communications and personnel.

- (ix) To serve as a storehouse and think-tank for maritime information on Nigeria and other countries in the world, particularly the West and Central African sub-region.
- (x) To establish and maintain functional links with maritime institutions, organizations, and agencies worldwide with the singular aim of promoting sustainable maritime training institutions, maritime regulatory institutions, maritime researchers, maritime administrators, shipping institutions, ship builders, shipping managers, ship brokers, port operators and managers and other major stakeholders associated with the maritime sector.
- (xi) To coordinate through publications, maritime information, on local and international maritime development especially in the areas of technology, human resources and capacity development.
- (xii) To fulfill the training and refraining needs of personnel deficient of maritime education in the industry.

2.17.3 Scope and Coverage

The scope and coverage of the Maritime Research and Learning Centre is expected to be limited strongly to the underlisted areas which are from its major objectives. These are:

- Policy Analysis

Comprehensive maritime studies in the area of policy formulation analysis, performance, evaluation and behaviour: The essence of maritime policy analysis is to provide necessary information and assist in reducing the level of uncertainty on policy formulation and

implementations. In other words, policy analysis activities include general collection of data, studies, and analysis of global patterns, policy trends, etc. as they relate to the maritime sector.

- **Capacity Building**

The Maritime Research and Learning Centre is expected to organize training and exposure activities to build and strengthen the capacities of policy, research information systems as well as other human resource needs through established linkage options, bilateral and multilateral relationship. Again, the strategy of capacity building is to identify human resources and skill gaps, resource needs and determine the general knowledge enhancement that may be required. The capacity building option also includes specially tailored training schemes for policy analysis and sustainability as it affects the maritime industry.

- **Information Management**

The Maritime Research and Learning Centre is to be committed to the development and continuous upgrading and updating of data bank on maritime issues, Maritime Research Library development, general computerization and access to global information systems as its watchwords.

Publications of such research outcomes must be pursued. It is also to create a forum for eminent scholars and stakeholders in the area of maritime studies to exchange

ideas and experience through the organizations of regular seminars, symposia, workshops, conferences, etc.

- **Consultancy Services**

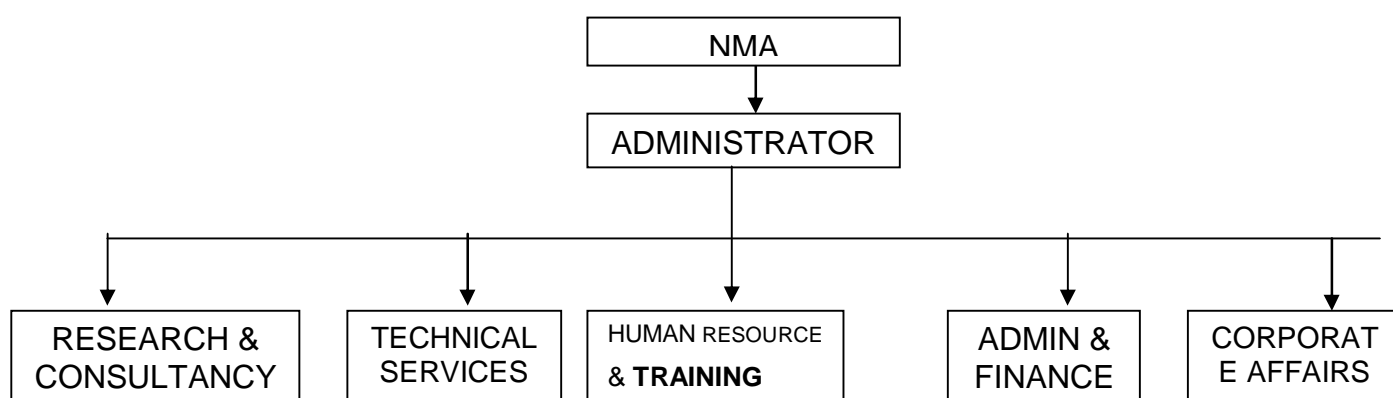
The Center is expected to initiate and perform consultancy services for various stakeholders of the maritime sector and particularly the governments, both locally and internationally.

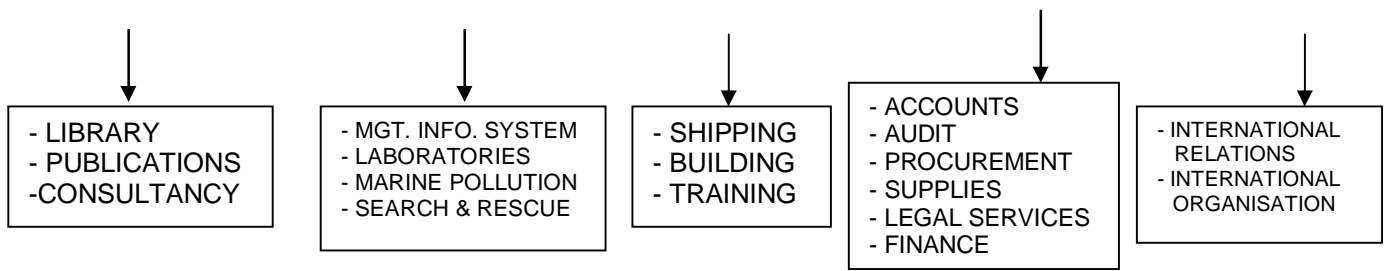
- **Development Intelligence**

The development intelligence programme is to monitor the key maritime operational and management indicators of national and international interests, analyze from time to time most current data on continental basis. In addition, it should provide regular publication on maritime matters and to relate with the Central Bank, Federal Ministries of Transport, Aviation, and Nigerian Railway Corporation, etc.

Figure2.17.3a

ORGANIZATIONAL STRUCTURE AND FRAMEWORK





2.17.4 Infrastructure And Facilities Required

By virtue of the responsibilities to be vested in the Maritime Research and Learning Centre, it is obvious that for it to perform creditably, adequate office accommodation and other physical infrastructure are to be provided. Again, computer units, analytical laboratories, seminar and workshop rooms, Conference Centers and standard library facilities are to be provided.

As much as possible a very large expanse of land must be acquired to accommodate the immediate and future needs of the center to avoid overcrowding (*Asoluka; 2003, pp. 281-284*).

CHAPTER THREE

3.0 RESEARCH METHODOLOGY

Introduction

The Nigerian situation is a tangle of paradoxes. Nigeria is one of the most richly endowed nations in the world in terms of human and material resources, but at the same time, she is

one of the poorest nations of the world. Similarly, with a coastline of over 850 kilometres and massive coastal and international shipping activities, Nigeria is technically a maritime nation. But, again, so negligible is the presence of Nigerians in the maritime industry that it might be no exaggeration to say that there is no Nigerian Maritime Industry, not to talk about its positive or otherwise impact on the Nigerian entrepreneur, vis-à-vis and the nation's economy.

In fact, for the purpose of understanding properly the impact of the maritime industry on the Nigerian entrepreneur and this nation's economy at large; it is important to define, from the onset, maritime cabotage as it relates to Nigeria. "Cabotage" is a nautical term from the Spanish, denoting strictly, navigation from cape to cape along the coastal without going out into the open sea. In International Law, Cabotage is "Identified with coastal trade so that it means navigating and traveling along the coast between the Ports thereof "(Cf. *Black's Law Dictionary 6th Edition* page 202. Also, the papers titled, "Advocacy paper for the promulgation of a Nigerian Maritime Cabotage Law" and *Advocacy paper for the promulgation of a Nigerian Maritime Cabotage Law Part 2: Presents and Potential problems of Cabotage and Recommended solutions*". Pages 42-57 and 213-224 of the "Supporting Documents for the Making of A Maritime Cabotaged Law in Nigeria" presented at the Public Hearing on the Cabotage Bill, in April, 2001 at the House Committee on Transport, National Assembly Complex, Abuja). It is also a

term coined from the French word “Caboter” meaning “to sail along a coast.”

However, Cabotage has come to be known as “Coastal trade” or “Coasting trade” or “Coastwise Shipping”, meaning the carriage of goods and persons by ships 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. The aim of the researcher is to find out the impact of Nigerian Cabotage on the Nigerian entrepreneur vis-à-vis the nation’s economy. The research is concerned with maritime Cabotage, which is also known as domestic waterborne transportation (*Chris Asoluka; 2003. pp. 69-70*).

The Nature of Maritime Cabotage Laws: A Maritime Cabotage Law is a Legislation empowering navigation and trading within a country’s coasts or from port to port within a nation to be reserved exclusively for and carried on by its national flagships and nationals. It is purely for the regulations of domestic shipping as opposed to international shipping. In this regard, it includes navigation and trading in the nation’s inland waterways. The Maritime Cabotage law may be in a single shipping legislation, or in a combination of two or more shipping legislations of a country.

There is another type of maritime cabotage which is often referred to as Short Sea Shipping or Regional Shipping which is concerned with the transportation of goods and for

passengers between ports of a given group of countries within a specific economic grouping (e.g. Mercosur, and the EU) by way of coastal ships, ferry services and/or port services such as tugs, dredges, maintenance and repair of craft, pilotage launches, bunkering and supply vessels, etc. Cabotage policies applied in such regions or sub-regions in the stead in such regions of an individual country, and as a result of inter-government agreements in order to favour local or regional employment and to control/regional or sub-regional coastal trade.

Many countries especially in Europe, North and South America including the US and Canada and South East Asia have already adopted one Cabotage Law or the other in order to attract the benefits derivable from a Cabotage Policy. However, this dissertation does not reveal any country in West African Sub-region that has promulgated, and is implementing a maritime cabotage regime. Greece and the United States of America have “strict” cabotage laws, whereas India, the Philippines, Malaysia, Australia and Brazil, among others, have liberalized cabotage laws.

3.0. a Research Methods Or Approaches.

A research method or approach/design gives details on the most suitable methods of investigating the nature of the research or dissertation, instruments, the sampling plan and the types of data to be used (Chismall, 1981).

Furthermore, Chismall (1981) also posited that “a research method or design forms the framework of the entire research process.” Therefore, if it is a good method or design, it will thus ensure that the information obtained is important to the researcher’s problem and that the objectives and economic procedures in collecting it are all within limits.

In fact, research in itself is a means by which knotty problems are solved in our attempt to push back the frontiers of human ignorance. It simply is a systematic quest for undiscovered truth. In pursuit of this undiscovered truth, a researcher needs facts, published documents from primary source and secondary sources.

3.0.b Justifications For The Approaches.

It is of utmost importance that the researcher takes proper care of the sources of his data, knowing very well that it reflects on the final result of the work. And if the data is faulty certainly, the result will be faulty (*Osuola, 1991*).

Therefore, in carrying out this study, two kinds of data collection methods were employed. These are primary and secondary. The nature of each of these will be discussed briefly.

(i) Primary Data:

This consists of original information from the specific purpose at hand (*Fraund and Williams, 1989*).

The answers given by respondents to the questionnaires administered will constitute one type of primary data. Personal observations will be another type of Primary data. Each of the primary data is discussed briefly as thus;

(a) Questionnaires: This serves as one of the major research instruments adopted by the researcher to retrieve information needed from the stakeholders. It has been expedient for the researcher to use questionnaire because of the large sample size and the type of data needed. The questionnaires contain multiple choice questions with possible answers which are designed to reflect different shades of opinions. Simple alternative questions having various options to be chosen from based on individual stake holder's perspective. This helps achieve unbiased and immediate answers. Also, open-ended questions which allow respondents to express views more precisely were included.

(b) Observations: Some of the explanatory procedures are based on the researchers' observations and his experiences, as he visited various places for on the spot assessment of events for onward inclusion into his findings.

(ii) Secondary Data:

The secondary data consist of information that already exists somewhere, having been collected for another purpose (*Kotler, 1997*).

It consists of published articles, textbooks, magazines, newspapers, project and materials on the related subject from the internet etc.

3.0.c Instruments Or Tools Used

The study is an empirical research work; the researcher has therefore employed the use of Questionnaire which has been administered to 105 stakeholders, whose responses have been used to determine the expected findings. The researcher, for the purpose of observations, visited the various premises in order to have first hand information to enable him draw admicable conclusions. The researcher believes that the data collected covered enough spectrums for a good result to be obtained.

3.0. d Research Population And Sample Size

A sampling is a representative of whole population of universe. The process of obtaining such a representation from the universe is called sampling. However, to obtain a sample, the population must be clearly defined.

For the purpose of this dissertation, the population has been defined as 105 stakeholders in the maritime cabotage industry in Nigeria. Therefore 105 stakeholders have been obtained. In order to obtain a sample from the population, the researcher took into cognizance those occupying positions that would enable them have first hand information and knowledge including facts that the researcher needs in order to draw reasonable conclusions.

On order to obtain accurate, reliable and objective results, the researcher has narrowed down the study to the impact of maritime cabotage, which is also known as domestic waterborne transportation within the Nigerian territorial waters, on the Nigerian entrepreneurs in particular and the nation's economy at large.

3.0.e Sampling Procedures Employed

The sampling procedure in this dissertation is based on the stakeholders in the maritime industry in Nigeria who have been ideally identified in the field. They might be more than the 105 as demonstrated by the researcher. All the same, the researcher decides to make use of the aforementioned so as to reduce the number and make accurate deductions from their various contributions. It was not possible to study all the population because, out of the 105 questionnaires administered, only 54 were completed and returned. So, in all, therefore, 54 persons formed the study sample of which 24 are senior officials of various shipping companies, while the remaining 30 are senior staff of NPA, NMA, etc.

3.0.f Justification For Sample Selection Procedure/Sample Size.

The justification for sample selection procedure/sample size and the justification for using a particular sample may entail

the limitations, which herein represent those external elements which constrain the researcher from achieving the objectives of the study Ajala (1996 p.22) opines the distinctions between delimitation and limitations as portrayed thus:-

“While determination is imposed by the researcher in order to capture accurately the focus of the problem, limitations are restrictions imposed by the environment of the study area. Such restrictions could be experienced in course of data collection”.

Therefore, the justification for this sample selection procedure / sample size and the jurisdiction for using this particular sample is as a result of these factors;

- (a) **Time:** The time to prepare the questionnaires to be administered and collected from the respondent who are always very busy and lack time to go through the questionnaires and answering same.
- (b) **Finance:** The cost of producing the questionnaires, the research materials which are difficult to get, typing and binding of the work are all prohibitive.
- (c) It is true that some of the respondents actually co-operated with the researcher, but some were indifferent and adamant.

3.0.g Statistical Techniques Used In Analyzing The Data.

Data analysis means categorizing, ordering, manipulating and summarizing of answers to research questions. The purpose of analysis is to reduce data into interpretable form so that the relationship of the research problem can be studied or tested.

Tables have been used for presentation of data and percentages to determine results from the data presented in tables.

A total work of one hundred percent (100 percent) was assigned to each research question. Thus, responses to questions in the questionnaires which relate to the particular research question are analyzed into those for or against (i.e. yes or no responses). Subsequently, percentage of “yes” responses and “No” responses are determined by using the formular.

$$\frac{X}{N} 100\% = Y\%$$

Where x = Total Yes or No responses to each research questions

N = Sample size

Y% = Percentage of the result arrived at.

CHAPTER FOUR

4.0 DATA PRESENTATION AND ANALYSIS

Introduction:

In this chapter, primary data collected for this study from the questionnaires administered to the stakeholders in the maritime industry are presented. The analysis of the data and the testing of the hypothesis postulated for the study through the application of various statistical tools will also be presented.

Furthermore, in order to reduce the bulkiness of the data, the data presented and analyzed are those that are considered relevant to the problems, objectives and hypothesis of this dissertation.

4.1 Analysis of Biographic Data Of Respondents

SECTION A:

This section 'A' deals with the analysis of the data collected from the questionnaires. These include demography, background of the respondents, the various frequencies, tables on specific questions in the questionnaires and the test of the hypothesis regarding the relationship between the maritime Cabotage, the entrepreneur and the nation's economy.

Distribution of The Respondents By Sex

Sex	Frequency	Percentage
Male	30	55.56%
Female	24	44.44%
Total	54	100%

Table 4.1a

From table 4.1a above, it is observed that most of the respondents are male with 30 (55.56%) in number while the remaining 24 (44.44%) are female.

Distribution of The Respondents By Marital Status

Married	Frequency	(Yes)	(No)	Percentage
Male	30	30	-	100%
Female	24	24	-	100%
Total	54	54	-	100%

Table 4.1b

From table 4.1b above, it is observed that all the respondents are married. That is to say that the males 100% and females 100% are married.

Distribution of The Respondents By Age Brackets

Age	Frequency	Percentage
Below 20	NIL	0%
20 – 35	5	9.90%
36 – 50	45	83.33%
51 – Above	4	6.77%
Total	54	100%

Table 4.1c

From table 4.1c above, it can be seen that there is no stakeholder who is a respondent with the age below 20 years of age. That is why it has a Nil Frequency and 0%. The stakeholders whose ages range between 20 and 35 is 5 (9.90%) those whose ages are between 36 and 50 are 45 (83.33%), and those between 51 and above are 4 (6.77%). This shows that all the stakeholders are majors and are competent and qualified to take decisions.

Distribution of The Respondents By Qualification

Qualification	Frequency	Percentage
WASC/HSC	24	44.44%
ND	10	18.52%
NCE	-	-
HND/BSC	14	25.93%
MSC	6	11.11%
Others	-	-
Total	54	100%

Table 4.1d

From table 4.1d above, it is observed that most of the respondents by qualification are WASC/HSC holders 24 (44.44%) those with ND are 10 (18.52%). There is no NCE holder, while 14 (25.93%) are HND/BSC holders, while MSC has 6 (11.11%), no other qualification could be seen.

Distribution of The Respondents By Income

Income Per Annum	Frequency	Percentage
N 10,000 – N 20,000	NIL	0%
N 20,001 – N 30,000	NIL	0%
N 30,001 – N 40,000	NIL	0%
N 40,001 – N 50,000	5	9.9%
N 50,001 – Above	49	90.10%
Total	54	100%

Table 4.1e

From table 4.1e above, it has been observed that, no respondent earns less than N40,000 per annum. Those that earn between N40, 001 and N50, 000 per annum are 5 (9.9%), those that earn N50, 001 and above are 49 (90.10%).

Distribution of The Respondents By Rank

Rank	Frequency	Percentage
Directors	24	44.44%
S/Managers	30	55.56%
Managers	-	-
Others	-	-
Total	54	100%

Table 4.1f

From table 4.1f above, 24 out of 54 have been observed to be Directors (44.44%) whereas 30(55.56%) are senior managers.

4.2 ANALYSIS OF DATA ACCORDING TO RESEARCH QUESTIONS – SECTION B

This section is aimed at interpreting results and testing of the hypothesis formulated in the study:

Hypothesis 1: Nigeria's Maritime Cabotage has no positive impact on the entrepreneurial growth of Nigerians hence the nation's economy. In trying to analyse this hypothesis, data collected and analysed can be seen as below:

Nigeria's Maritime Cabotage has positive impact on the entrepreneurial growth of Nigerians hence the nation's economy.

Option	Frequency	Percentage
Agree	24	44.44%
Strongly agree	20	37.03%
Disagree	5	9.25%
Strongly disagree	5	9.25%
Total	54	100%

Table 4.2a

From table 4.2a above, 44.44% respondents agree with the statement, 37.03% strongly agree that Nigeria's maritime Cabotage industry has a positive impact on the entrepreneurial growth of

Nigerians, hence the nation's economy. 9.25% disagree with this statement while 9.25% strongly disagree with the statement.

From a critical analytical perspective, it shows that the Nigeria's Maritime Cabotage industry (if well-organized) has a positive impact on Nigerian entrepreneurs and hence the nations economy. So, based on the above analysis, the hypothesis should therefore be accepted.

The analysis is represented in a Pie Chart, thus:

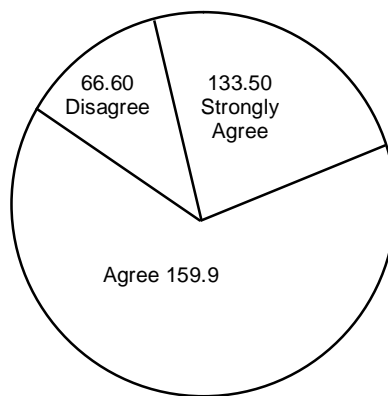


Figure 4.2.1

Hypothesis II: Will the Cabotage law attract new business to the maritime sector?

In testing this hypothesis data are collected and analysed as shown below:

Option	Frequency	Percentage
Agree	10	18.52%
Strongly agree	20	37.03%
Disagree	14	25.92%
Strongly disagree	10	18.52%
Total	54	100%

Table 4.2b

From table 4.2b above, this shows a summary of the sample of respondents to the questionnaire, as given, whether or not, the Cabotage law will attract new business to the maritime sector. 10 (18.52%) agree with the statement, 20(37.03%) strongly agree that the Cabotage law will attract new business to the maritime sector, while 14 (25.92%) Disagree with the statement, about 10(18.52%) strongly disagree with same.

But, based on the above analysis, since a greater percentage of people strongly agree with the statement, the hypothesis will be accepted.

The analysis is represented on a Pie Chart thus:

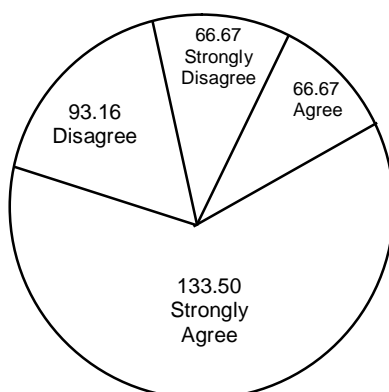


Figure 4.2.2

Hypothesis III: As a stakeholder in the maritime industry/sector, are you fully aware of the benefits of the Cabotage law?

The Benefits of the Cabotage Law

Option	Frequency	Percentage
Agree	10	18.52%
Strongly agree	25	46.30%
Disagree	7	13.00%
Strongly disagree	12	22.22%
Total	54	100%

Table 4.2c

From table 4.2c above, the analysis reflect that, 46.30% (25) of the respondents perceive that, they fully are aware of the benefits of the Cabotage law 22.22% of the respondents strongly disagree to have been fully aware of the benefits of the Cabotage law. 7(13.00%) disagree with the question, while 18:52% agree with the question. Since a higher percentage of the respondents are aware of the benefits of the Cabotage laws, the hypothesis will be accepted.

The Analysis is represented on a Pie Chart.

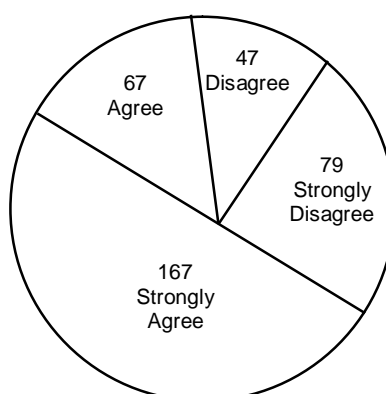


Figure 4.2.3

Hypothesis IV: Do you fully understand aims, objectives and purposes of the Cabotage law?

Whether fully understand aims objectives and purposes.

Option	Frequency	Percentage
Agree	15	27.77%
Strongly agree	25	46.30%
Disagree	14	25.92%
Strongly disagree	-	-
Total	54	100%

Table 4.2d

From table 4.2d above, it has been observed that there are 25 (46.30%) of the respondents who have strongly confirmed that they fully understand the aims, objectives and purposes of the Cabotage law, 15 (27.77%) do also understand same, whereas, 14 (25.92%) claim not to have understood the aims, objectives and purposes of Cabotage law. Since a higher percentage support the understanding of same, we accept the hypothesis. The analysis has been represented hereunder vide a Pie Chart. Thus:

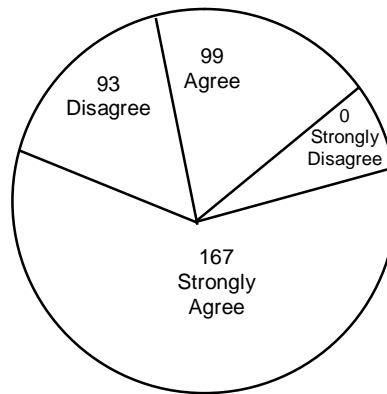


Figure 4.2.4

Since 256⁰ out of 360⁰ have agreed, the hypothesis is thus accepted

Hypothesis V: Is your company participating or planning to participate in the new Cabotage regime?

Company Participation in new Cabotage regime

Option	Frequency	Percentage
Agree	10	18.52%
Strongly agree	5	9.26%
Disagree	19	35.19%
Strongly disagree	20	37.04%
Total	54	100%

Table 4.2e

From table 4.2e above, it appears as if some of the stakeholders (who are in the majority) will not be in a position to participate in the Cabotage regime. This might be because of lack of sufficient capital, personnel, and other logistics, hence 39 against 25 persons. Since this is higher, we then reject the hypothesis.

This is being represented on a pie chart thus:

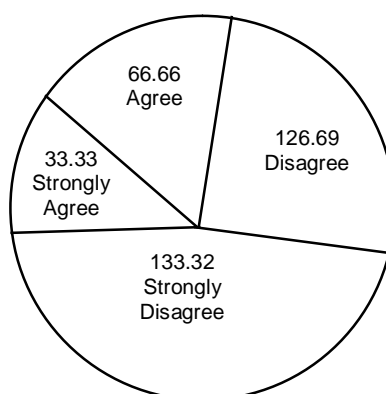


Figure 4.2.5

Hypothesis VI: What is the role of NMA in the new Cabotage regime?

The role of NMA in the new Cabotage regime

Option	Frequency	Percentage
Regulatory	54	100%
Financing	-	-
Training	-	-
All of the above	-	-
Total	54	100%

Table 4.2f

From table 4.2f above shows that all the respondents are of the view that NMA's current role in the new Cabotage regime is regulatory than any other. Since 100% of the respondents have the same view, we accept the hypothesis.

The hypothesis is represented on a Pie Chart thus:

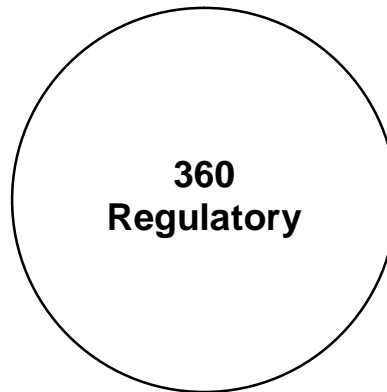


Figure 4.2.6

Hypothesis VII: Cargo reservation development can enhance maritime capacity building in Nigeria.

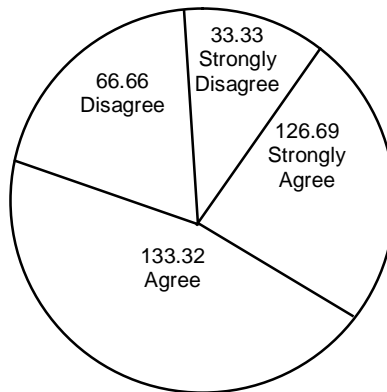
Cargo reservation development

Option	Frequency	Percentage
Agree	20	37.04%
Strongly agree	19	35.19%
Disagree	10	18.52%
Strongly disagree	5	9.26%
Total	54	100%

Table 4.2g

From the foregoing Table 4.2.g above, it can be deduced that the stakeholders have agreed that cargo reservation development can enhance maritime capacity building in Nigeria, hence 39 persons against 25 as can be seen in the above table. The hypothesis is thus accepted.

This is represented on a Pie Chart as thus:



CHAPTER FIVE

5.0 DISCUSSION OF THE RESULTS

Introduction:

The Nigerian Maritime Transportation System comprises seas and inland waterways and associated infrastructure (e.g. dams, aids to navigation etc.), which is linked to a network of international ocean trade routes. The system also includes vessels that carry Water borne cargo, ships, ship operators, ports and the labour force.

Presently, the Nigerian vessel fleet engaged in both foreign and domestic trades has a combined capacity of approximately 400,000dwt. The product mix shows mainly general cargo vessel, motorboats and trawlers. Only five vessels, with a combined dwt tonnage of about 70,000 are ocean going infrastructural facilities, cargo handling plants/equipment, fire-fighting boats, dredging equipments etc exist at the various ports for successful operation of the Nigerian maritime transport. The maintenance and development of these facilities rest solely with the Nigerian Ports Authority (NPA). The NPA also provides port security, dock labour and port reforms to engender conducive sea transport services.

5.1 FINDINGS

From the analysis made so far, it has been rediscovered that the introduction of the Nigerian Maritime Cabotage law, the Nigerian entrepreneur lives to benefit from the various business opportunities opened by the Cabotage industry. This will enhance the entrepreneurial growth and hence the nation's economy.

It is still, for the time being, clear that the Cabotage Law, if properly harnessed will make possible the attraction of new businesses to the maritime sector. This will also enhance maritime capacity building in Nigeria since the Cabotage Law will make it possible for cargo reservation. If the cargo reservation principle will be acceptable in this era of Cabotage and globalization, this will also enhance profit maximization for the Nigerian entrepreneur. With the little investigation carried out, it really appears as if Cabotage regime will trigger economic activities and economic growth in Nigeria through the entrepreneurship empowerment, equity financing, which has been made possible by the bank reforms.

It has also been discovered that most stakeholders who are active participants in the Cabotage regime are fully aware of the Cabotage Laws and the benefits accruable to the participants.

On the other hand, it has been unveiled that majority of the stakeholders may not have the equal opportunity to participate in the Cabotage business. This might be as a result of lack of

capital or the personnel required to handle the business. This has been made known by the responses to the question on whether or not the respondents' companies will participate in the Cabotage business. Most stakeholders responded 'No'. This is seen as a result of the nature of the Cabotage business, which is capital intensive, which very many cannot afford.

5.2 PROOF OF HYPOTHESIS

Going by the analysis so far made on the hypothesis presented, analysed and re-represented on the pie chart, one can deduce from using the formular:

$$\left(\frac{X}{N} \right) \times 100\% = Y\%$$

Where x = Total Yes or No to each research question
 N = Sample Size
 $Y\%$ = % of the result

It has been observed that, out of 7 hypothesis posed, 6 were affirmative, indicating that Cabotage business will be of positive impact on the growth of Nigerian entrepreneur, hence the nation's economy. This is explained

Thus: $\frac{6}{7} \times 100\% = Y\%$

$$\frac{6}{7} \times \frac{100}{1} = \frac{600}{7} = 85.71\% \quad \text{affirmative}$$

It is therefore recommended that, Cabotage law should be introduced into the country in order to foster the entrepreneurial growth and healthy economic upliftment of the nation.

This will be made possible because of the inherent benefits that are accruable from the Cabotage trade.

CHAPTER SIX

6. SUMMARY OF FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS

Introduction:

From the research conducted, it has become quite clear that the maritime issue is tied to National Defence and Economy. For smaller states without regional, strategic and political interest, the concept of free port, full laissez faire economy and liberal shipping policy and practice may lead to economic growth. However, our study revealed this to be the exception rather than the rule. Only Hong Kong, a small erstwhile colony of Britain, and Singapore could be said to have leaned towards this practice. The bulk of other states have continued to reflect their domestic economic development agenda on their shipping policies. The strategy has been generally to support and build a more competitive local shipping industry.

The more successful a nation's shipping industry, the more liberal its position towards true liberalization of the shipping. However, there is clear evidence that forms of national support could attract hostility or accommodation depending on how it affects overall trade and industry practice. Besides, the clout or perception of the strength of a country can also define the international tolerance level. A clear example is the legislation and practice of cargo preference by the USA, in spite of the EU position. Apart from this, the size of market

and the over-all maritime potential of a nation can also inform others' position on its shipping policy.

6.1 FINDINGS

Nigeria's trade is dominated by foreign shipping companies. The trade is mainly import-oriented, except for crude oil, which accounts for over 90% of the export trade. The transportation of crude oil is largely carried out by foreign tankers as the terms of trade is on FOB basis.

The non-participation of indigenous shipping companies in the transportation of crude oil and LNG means a huge loss to the Nigerian economy, amounting to an aggregate of USD 10.5 billion in 5 years.

The vessel capacity of indigenous shipping companies is abysmally low with an average age distribution of 27 years. This places the Nigerian Shipping companies at a disadvantaged position in international competition.

There are enormous opportunities for indigenous participation in coastal and domestic trades which involve mainly the lifting of petroleum products from Nigerian oil terminals to West African countries and between Nigerian ports. There are also good opportunities for indigenous participation in offshore oil and gas vessel supply services.

The Nigerian inland waterways are grossly underdeveloped, though they represent viable investment opportunities. The

Nigerian public sector cargo represents over 70 percent of the total cargo output at the Nigerian ports.

It has also been discovered that Cabotage has attracted new businesses to the maritime sector.

The stakeholders in the maritime sector are fully aware of the benefits of the Cabotage laws.

It has been uncovered that many of the stakeholders' companies may not part-take in the Cabotage business because of lack of capital, personnel, infrastructure, incentives (reduced cost of investment i.e. interest) and the ease with which to borrow funds.

It is observed that the aims, objectives and purpose of Cabotage laws is known to the stakeholders in the Cabotage industry.

From the investigations so far carried out, it has been discovered that the stakeholders have the view that the real role of the NMA in the new Cabotage regime should be regulatory.

It has also been unveiled that cargo reservation can develop and enhance maritime capacity building in Nigeria.

That there is a possibility that cargo reservation principle will be acceptable in this era of Cabotage and globalization, if well harnessed, and articulated.

During the cargo allocation regime, the NMA concentrated mainly on what may be seen as private cargo rather than working out an effective mode and control mechanism for major public cargo generators in Nigeria i.e. the NNPC, Ministry of Mines and Power, Ministry of Works etc. Distribution of export private cargo was quite negligible.

Import Private Cargo is quite less than Import Public Cargo. The total absence of control of Public Cargo resulted in the non-use of waiver powers conferred on the NMA and the Ministry of Transport. Indigenous shipping companies see the relevance of the NMA in terms of mandatory collections.

Indigenous companies were disillusioned with NMA during the cargo allocation era, because, they perceived that it encouraged a patronage system in which owners of ships were not getting cargoes. Rather, cargoes were allocated to “brief case shipping companies” and “Connected” public officers. This explains the reason why they felt unconcerned when cargo allocation was suspended.

Because of the implication arbitrage in Cargo allocation it was not favourable to any of the stakeholders in shipping. Rather, it increased the cost of doing shipping.

The NMA feels that indigenous shipping companies were lazy and relied solely on them for their cargoes instead of equally sourcing elsewhere. The NMA feels that indigenous shipping companies do not possess the required vessels for available cargoes.

That one of the ways that the Cabotage regime triggers economic activity and economic growth in Nigeria is through the entrepreneurship empowerment, job creation through restructured and reorganized NMA/NPA, hence, the increased earning of the NMA, through redefined, well-organized NMA working conditions and environment with professionals in place.

With the concession of the ports, the concessionaires would ensure strict enforcement of the Cabotage laws. The stakeholders would engage professionals who would be competent, resourceful and capable of taking advantage of the opportunities the Cabotage regime has created in the maritime sector to improve their lots, hence the nation's economy.

6.2 CONCLUSIONS

The Nigerian experience revealed much confusion for several reasons. Apart from getting involved in the turbulent politics of ocean-borne trade right from the start without grooming and nurturing local competence, first, it totally ignored the need to create a learning curve with the sheer absence of a Cabotage legislation. In seeking to implement the National Shipping Policy Act, the NMA left out the bulk of section 14 cargoes, in

pursuit of section 9 cargoes. Added to the fact that its application of section 18 was reduced to bureaucratic procedure, private cargoes by the fact of ownership, size and numbers were quite cumbersome to identify, control and allocate. It also tended to affect usual commercial trade practice. Moreover, the shippers were left to pay a high transaction cost incidental to the measure for the support of indigenous shipping companies. Yet there was no remarkable growth. Rather, the decline and demise of conference lines made cargo allocation procedure unclear to understand and control.

However, the study noted that defective and distasteful as Cabotage regime might appear to others, the NMA and other stakeholders still have the statutory duty to assist the maritime development of Nigeria. To do this, it was seen that public sector cargo size in Nigeria could provide a firmer and justifiable ground for the commencement of a credible programme. A more efficient cargo support programme then should focus on the control and involvement of Nigerian shipping companies in the carriage of section 14 cargoes. Not only are these easier to identify and manage, the resistance to the approach is not also expected to be high.

Two reasons account for this position. First, a review of the USA cargo preference revealed that the practice did not inhibit intended competition. It did not also affect usual commercial practice between a willing buyer and seller. All it did was to identify government – impelled cargo for competition among

domestic shipping companies. In the event that no national flag could take up the cargoes, a waiver was issued allowing foreign vessels to lift on certain conditions. Although the US power and clout could account for the success of this approach and its seeming international accommodation, it is submitted that public institutions generating such public cargoes do have a contractual right to decide the terms of trade and the contracts they wish to choose. Besides, the linkage between national flag and defence and security needs can easily come handy as a precedence represented in the consideration of a nation's interest, politics and survival.

6.3 RECOMMENDATIONS

A situation where government agencies are allowed to break laws and defeat policy goals should not be tolerated. In order to give meaning and seriousness to Cabotage laws and to the role of the NMA, the authority should immediately be made to pursue the following steps:

- The need to re-examine the organization's structure to reflect its functional responsibilities as with other maritime regulatory agencies, instead of maintaining the existing bureaucracy induced organogram. Also, there is a need for a closer liaison between the NMA and major public sector cargo generators.
- The Minister is requested to delegate certain functions stated in the NSPA to the NMA. Such functions should include powers to establish regulations and procedures for

government agencies to ensure that the NSPA legislation is implemented as intended by the National Assembly.

- In addition to the need to strengthen liaison and co-operation with major public cargo generators, the NMA should also maintain desks assigned to such major public cargo generators for the purpose of identifying programmes, projects and contracts captured within the framework of the NSPA. Also, a close watch should be maintained by the NMA to support and gain from trade delegations, bilateral agreements etc. The critical role of this unit is important in the assessment and implementation of the NSPA.
- A Maritime Business Development Unit should be established to determine the issue of availability of Nigerian ships and capability of indigenous operators whenever such matters arise from public cargo generators, shipping companies or other agencies. Similarly, this unit should provide guidance on the issue of what is responsible in freight rates etc.
- The NMA should acting on behalf of the minister, give effect to section 26 of the NSPA by effectively monitoring compliance of government agencies with section 14 of the NSPA. In the meantime, it should commence work with consultants to work out modalities for identifying major public sector cargo, and past abuses. Following from the exercise, a notification of waiver under section 14 (4) should be sent to public sector cargo generators who have been in breach. A programme

should then be worked out between the NMA and such bodies on how best to approach their respective shipping needs.

- There is the necessity to start using certain statutory powers if the NMA is to achieve its objectives vis-à-vis the regulatory function of the Cabotage trade. A high powered interministerial team with presidential blessing may be necessary to agree at the need to understand government maritime policy thrust, expectations, obligations and sanctions for the purpose of ensuring the success of an effective Cabotage trade in an economy like ours.
- A strong ministerial and legislative liaison should be initiated to report to the latter, progress in public sector Cabotage trade performance for necessary legislation (where necessary), and review.
- The management of the NMA as a regulatory body of the Cabotage trade should develop a mission of Cabotage trade at a transitory phase in developing a competitive domestic shipping industry. All efforts must therefore, be concentrated on the possible release of all local potential, while discharging the patronage regime. To put it straight, the NMA should know where it is going before it “ends up somewhere else”. Management and board must then be bound by the ties described as Montgomery’s connect. This is like soldiers leading managers into battle with a clear understanding of the war aims with compass giving them direction and confidence.

APPENDICES 1

St. Clements University

Dear Sir,

RE: QUESTIONNAIRE FOR SURVEY.

I am a Ph.D student in the Faculty of Management Studies, and would wish to carry out a research survey to enable me write my Dissertation on **“The Impact of Cabotage Act on Entrepreneurial Growth opportunities and the Nation’s Economy”: A Case Study of Nigerian Cabotage Act.**

Please, be assured that all the answers you give would be used strictly for this academic study purpose only.

I appreciate your anticipated assistance and God bless.

Yours faithfully,
Austin Nweze

APPENDICES II



LBS

PAN-AFRICAN UNIVERSITY

May 17, 2005

Dear Sir/Madam

LETTER OF RECOMMENDATION

Austin Nweze is a PhD candidate researching on the National Maritime Authority and the NMA entrepreneurial opportunities created by the recent Cabotage law in the Maritime Sector.

I am offering him advice and supervision on this research project for his PhD dissertation.

Kindly provide him with any information that will aid in the research work.

Many thanks for your assistance

Yours faithfully

Pat Utomi (Prof.)

APPENDICES III

SURVEY QUESTIONNAIRE

SECTION A

- | | | | |
|----|----------------|------------------|--------------------------|
| 1. | SEX | Male | <input type="checkbox"/> |
| | | Female | <input type="checkbox"/> |
| 2. | MARITAL STATUS | Married | <input type="checkbox"/> |
| | | Single | <input type="checkbox"/> |
| | | Widow | <input type="checkbox"/> |
| | | Widower | <input type="checkbox"/> |
| 3. | AGE | Below 20yrs | <input type="checkbox"/> |
| | | 20 – 35yrs | <input type="checkbox"/> |
| | | 36 – 50yrs | <input type="checkbox"/> |
| | | 51 – above | <input type="checkbox"/> |
| 4. | QUALIFICATION | WASC/HSC | <input type="checkbox"/> |
| | | ND | <input type="checkbox"/> |
| | | NCE | <input type="checkbox"/> |
| | | HND/B.Sc | <input type="checkbox"/> |
| | | M.Sc | <input type="checkbox"/> |
| | | Others | <input type="checkbox"/> |
| 5. | ANNUAL INCOME | N10,000 – 20,000 | <input type="checkbox"/> |
| | | N20,001 – 30,000 | <input type="checkbox"/> |
| | | N30,001 – 40,000 | <input type="checkbox"/> |
| | | N40,001 – 50,000 | <input type="checkbox"/> |
| | | N50,001 - above | <input type="checkbox"/> |

6. RANK
- | | |
|----------------|----------------------|
| Director | <input type="text"/> |
| Senior Manager | <input type="text"/> |
| Manager | <input type="text"/> |
| Others | <input type="text"/> |

SECTION B

7. Nigeria's Maritime Cabotage has positive impact on the entrepreneurial growth of Nigerians hence the nation's economy.

Agree	<input type="text"/>
Strongly Agree	<input type="text"/>
Disagree	<input type="text"/>
Strongly Disagree	<input type="text"/>

8. Will the cabotage Law attract new businesses to the Maritime Sector?

Agree	<input type="text"/>
Strongly Agree	<input type="text"/>
Disagree	<input type="text"/>
Strongly Disagree	<input type="text"/>

9. As a stakeholder in the maritime sector, are you fully aware of benefits of cabotage law?

Agree	<input type="text"/>
Strongly Agree	<input type="text"/>
Disagree	<input type="text"/>
Strongly Disagree	<input type="text"/>

10. Do you understand fully, aims, objectives and purposes of cabotage law?

Agree ☐

Strongly Agree ☐

Disagree ☐

Strongly Disagree ☐

11. Is your company participating or planning to participate in the New Cabotage regime?

Agree ☐

Strongly Agree ☐

Disagree ☐

Strongly Disagree ☐

12. What is the role of NMA in the New Cabotage regime?

Regulatory ☐

Financing ☐

Training ☐

All of the above ☐

13. Can cargo reservation develop and enhance maritime capacity building in Nigeria?

Agree ☐

Strongly Agree ☐

Disagree ☐

Strongly Disagree ☐

APPENDICES IV

COASTAL AND INLAND SHIPPING (CABOTAGE) BILL, 2003

SUMMARY: A new dimension was recently added to the maritime sector of the Nigerian economy with the enactment of the Coastal and Inland Shipping (Cabotage) Act, 2003, which was assented to by the President of Federal Republic of Nigeria on the 7th May, 2003. This Act, in effect, seeks to restrict the use of foreign vessels in domestic coastal trade, promote the development of indigenous tonnage, and, inter alia, establish a cabotage vessel financing fund.

The Act comprises 57 clauses which are divided into seven (7) parts in the order hereunder contained.

PART I - RESTRICTION OF VESSELS IN DOMESTIC COASTAL TRADE

This part confers power on the Minister to delegate any of his powers, duties or functions on any person. It also places restrictions on certain vessels, and at the same time stipulating which vessels are permitted to engage in cabotage services within the territorial, coastal inland waters, island or any point within the waters of the Exclusive Economic Zone of Nigeria. Other matters treated thereunder include restriction on towage, carriage of petroleum products and ancillary services, navigation in inland waters, which are reserved for wholly owned Nigerian vessels. The Act goes further to define "wholly owned Nigerian vessels (cf. clause 6(1) and (2), manning requirements and Nigerian built vessels (cf clauses 7 and 8). Certain vessels are exempted from the restrictions therein contained, in certain circumstances (cf clause 9).

Waivers may be granted by the minister upon receipt of an application for the same (cf clauses 10 - 15).

PART II - LICENCE TO FOREIGN VESSELS

In this part, the minister is empowered to grant restricted license to foreign owned vessels upon application and subject to certain conditions (cf. clause 16). Other matters treated in this part include the following: terms and conditions of license; duration of license; suspension, cancellation and variation of license; tariff on license; guidelines on license,' and the consequences of operating without license.

PART III - REGISTRATION

The Act requires that every vessel that is intended for use in accordance with the provisions of this Act must be registered in the Special Register for Vessels and Ship Owning Companies Engaged in Cabotage, and shall meet all eligibility requirements set forth in this Act and in the Merchant Shipping Act

(MSA) Cap. 224, laws of the Federation of Nigeria, 1990 to the extent that the MSA is not inconsistent with the provisions of this Act (cf. clause 23(1)).

The Act in this part also contains provisions on vessels that are eligible for registration, ownership requirements, proof of ownership, deletion from registry, and citizenship requirement for ship financing. Other issues covered include temporary registration and age of vessels.

PART IV - ENFORCEMENT.

For the enforcement of the provisions of this Act, . there is a provision for the maintenance of special register in the office of the Registrar of Ships called Special Register for vessels and shipping companies engaged in Cabotage Trade (cf. clause 30(1)).

Also there are provisions on the establishment of Enforcement unit/officers, powers of enforcement officers including powers to detain ships. The Act also contains provision on port clearance to vessels as well as the requirement on any person engaged in the business of employing vessels for the domestic coastal trade to publish the requirements for the employment if such vessels.

PART V - OFFENCES

The Act in this part contains provisions on punishments for various offences where there are contraventions of its provisions. Such offences include offences against the Act, i.e. contravention of clauses 2,3,4, and 5; obstructing an enforcement officer; false or misleading statements liability of ship owners, corporate bodies and officers. Contravention of clauses 2,3,4,5 and 22 on more than one day is deemed by the Act to be a separate offence for each day (cf clause 39).

The Act makes a contravention of any of its provisions an offence of strict liability (cf clause 41 (1)), vesting jurisdiction over matters arising therefrom in the Federal High Court.

PART VI - CABOTAGE VESSEL FINANCING FUND

This fund is created by virtue of clause 43(1) of the Act for the purpose of promoting the development of indigenous ship acquisition capacity. This is realized by providing financial assistance to Nigerian operators in the domestic coastal shipping. The monies to be paid into the fund are set out in clause 44 of the Act.

Other provisions in relation thereto include beneficiaries of the fund and the management thereof

PART VII - MISCELLANEOUS

The Act in this part empowers the minister to make regulations with respect to the matters set out in clause 47 thereof Other provisions include the requirement that licenses, waivers, permits and approvals are to be carried on

board the ship at all times; requisition of vessels by minister; and units for account.

In the transitional provisions, the Act provides at clause 51 thereof that the provisions of the Act shall become enforceable from the first anniversary of the day on which this Act comes into force, i.e. one year after the commencement date of this Act.

There are provisions in relation to vessels with valid license before the coming into effect of this Act; repeals and amendments; saving of the provisions of the MSA that are consistent with the provisions of this Act; savings as to court proceedings commenced before the commencement of the Act, and the interpretations.

COASTAL AND INLAND SHIPPING (CABOTAGE) BILL, 2003

ARRANGEMENT OF CLAUSES

PART I - RESTRICTION OF VESSELS IN DOMESTIC COASTAL TRADE

Clause:

1. Power of Delegation
2. Prohibition
3. Restriction on Towage
4. Carriage of Petroleum and Ancillary Services
5. Navigation in Inland Waters
6. Wholly Owned Nigerian Vessel
7. Manning Requirement
8. Nigerian Built Vessel
9. Application to Foreign Vessels

WAIVERS

10. Waiver on Wholly Nigerian Owned
11. Waiver on Manning Requirement
12. Waiver on Nigerian Built Vessels
13. Order for Granting of Waivers
14. Duration of Waivers
15. Ministry to Issue Guidelines on Waivers

PART II - LICENCE TO FOREIGN VESSELS

16. Grant of License to Foreign Vessels and Conditions
17. Terms of Conditions of License
18. Duration of License
19. Suspension, Cancellation and Variation of License
20. Tariff on Waivers
21. Ministry to Issue Guidelines on License
22. Operating Without License

PART III - REGISTRATION

- 23. Registration
- 24. Ownership Requirements
- 25. Proof of Ownership
- 26. Deletion from Registry
- 27. Citizenship Requirement for Ship Financing
- 28. Temporary Registration
- 29. Age of Vessels

PART IV – ENFORCEMENT

- 30. Special Register
- 31. Enforcement Officers
- 32. Powers of Enforcement Officers
- 33. Detention Order
- 34. Port Clearances to Vessels
- 35. Publish Requirement for Employment of Vessels.

PART V - OFFENCES

- 36. Offences against this Act
- 37. Obstructing an Enforcement Officer
- 38. False or Misleading Statements
- 39. Deemed Separate Offence.
- 40. Liability of Ship Owners, Corporate Bodies and Officers
- 41. Strict Liability and General Penalty
- 42. Jurisdiction

PART VI - CABOTAGE VESSEL FINANCING FuND

- 43. Cabotage Vessel Financing Fund
- 44. Funding
- 45. Beneficiaries
- 46. Management of the Fund

PART VII - MISCELLANEOUS

- 47. Regulations
- 48. Licences and Waivers on Board
- 49. Requisition of Vessels by Minister
- 50. Units of Accounts
- 51 Transitional Provisions
- 52. Vessels with Valid Licence
- 53. Repeals and Amendments
- 54. Savings
- 55. Saving as to Court Proceedings
- 56. Interpretation
- 57. Short Title.

AN ACT TO RESTRICT THE USE OF FOREIGN VESSELS IN DOMESTIC COASTAL TRADE, TO PROMOTE THE DEVELOPMENT OF INDIGENOUS TONNAGE AND TO ESTABLISH A CABOTAGE VESSEL FINANCING FUND AND FOR OTHER MATTERS RELATED THERETO

Sponsor: HON. DR. OKEY UDEH & OTHERS

BE IT ENACTED by the National Assembly of the Federal Republic of Nigeria and by authority of same as follows:

PART I - RESTRICTION OF VESSELS IN DOMESTIC COASTAL TRADE

1. - (1) The Minister may by instrument delegate any power, duty or function of the Minister under this Act to any person to be exercised or performed by such person, as the case may be, and, if so exercised or performed, shall be deemed to have been exercised by the Minister.

(2) Any delegation by the Minister under this Section may be revoked by instrument.

2. Subject to the further provisions of this Act, no vessel other than vessels wholly owned and manned by Nigerian citizen(s), built and registered in Nigeria shall engage in the domestic coastal carriage of cargo and passengers within the coastal, territorial, inland waters, island or any point within the waters of the Exclusive Economic Zone of Nigeria.

3. -(1) Subject to the further provisions of this Act, it shall be unlawful for any tug or vessel not wholly owned by a person who is a Nigerian citizen to tow any vessel from or to any port or point in Nigeria waters or tow any vessel carrying any substance whatsoever whether of value or not or any dredged material whether or not it has commercial value from a port or point within Nigerian waters.

(2) Nothing in this Section shall preclude foreign vessel from rendering assistance to persons, vessels or aircraft in danger or distress in Nigerian waters.

4. Subject to the further provisions of this Act, no vessels, tugs, barges or vessels of whatever type other than vessels, tugs and barges whose beneficial ownership resides wholly in a Nigerian citizen(s) shall engage in the carriage of materials or supply .services to and from oil rigs, platforms and installations or the carriage of petroleum products between oil rigs, platforms and installations whether offshore or onshore or within any ports or points in Nigerian Waters.

5. Subject to the further provisions of this Act, no vessel of whatever type or size shall engage in domestic trading in the inland waters of Nigeria other than vessels that are wholly owned by Nigerian citizen(s).

Carriage of Petroleum products and Ancillary services. .

6.-(1) In this Act and notwithstanding the provisions of any other laws, vessels wholly owned by Nigerian citizen means vessels whose 64 shares are beneficially owned by a Nigerian citizen(s) or a corporate citizen registered in Nigeria with 100% of its share capital beneficially owned by Nigerian citizen(s).

(2) The shares in the vessels and the ship owning company under Sub clause (1) must be held by Nigerian citizen(s) free from any trust or obligation in favour of non-Nigerians.

7. In this Act, a vessel is wholly manned by Nigerians Manning where all the shipboard Officers and crew employed aboard the vessel are exclusively of Nigerian citizenship.

8. - (1) In this Act, a vessel is built in Nigeria where all the major components of its hull and superstructures are vessel fabricated in Nigeria or assembled entirely in Nigeria.

(2) In the case of rebuilding, a vessel shall be eligible for cabotage services if the entire rebuilding including the construction of any major component of the hull or superstructure of the vessel is effected in Nigeria.

(3) Vessels built in a foreign yard but forfeited to any Nigerian governmental authority for breach of any laws of Nigeria or captured as war prizes are exempted from the Nigerian built requirement.

9. Clauses 2, 3,4 and 5 shall apply to every foreign vessel except any foreign vessel that is-

(a) engaged in salvage operations provided such salvage operation is determined by the Minister to be beyond the capacity of Nigerian owned and operated salvage vessels and companies;

(b) notwithstanding the provision of Sub clause (a), the requirement for Ministerial determination shall not apply to any vessel engaged in salvage operations for purposes of rendering assistance to persons, vessels or aircrafts in danger or distress in Nigerian waters;

(c) engaged with the approval of the Minister or any other relevant Government agency in activities related to a marine pollution emergency or to any threatened risk thereof;

(d) engaged in any ocean research activity commissioned by the Department of Fisheries or any other department of the government responsible for such research; or (e) operated or sponsored by a foreign government that has sought and received the consent of the Minister for Foreign Affairs to conduct marine scientific research.

WAIVERS

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 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 activities described in the application.

11. The Minister 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.

12. -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 and 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 characteristics of vessels and craft which are built in Nigeria.

13. Where any of the circumstances described in Clauses 10,11 and 12 applies and the Minister has determined that a waiver be granted, the order for granting the waiver shall be:

(1) In the first instance, to a shipping company and vessels owned by a joint venture arrangement between Nigerian citizens and non-Nigerians;

(a) the equity shareholding of the Nigerian(s) joint venture partner in the vessel and the shipping company shall not be less than 60 per centum; and

(b) the percentage so determined to be held by Nigerian joint venture partner is held by Nigerian citizen(s) free from any trust or obligation in favour of non-Nigerians.

(2) In the second instance, to any vessel registered in Nigeria and owned by a shipping company registered in Nigeria provided that the applicant shall comply with all the relevant provisions of this Act.

14. Every waiver granted under this Act shall specify the period of time for which it shall be valid, which period shall not in any circumstance exceed one (1) year.

Minister to 15. - (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.

PART II - LICENCE TO FOREIGN VESSELS

16. -(1) Upon application for a license by a person resident in Nigeria acting on behalf of a foreign owned vessel, the Minister may issue a restricted license for the foreign owned vessel to be registered for participation in the coastal trade, where the Minister is satisfied that:

(a) any of the circumstances in Clauses 10, 11 and 12 is applicable; and (b) the foreign owned vessel is eligible to be registered in Nigeria; and (c) the owning company of the foreign vessel has a representative office in Nigeria; and (d) all applicable duties, levies and tariffs imposed by the relevant authorities applicable to foreign vessels with respect to its participation in the coastal trade have been paid; and (e) the foreign vessel possesses all certificates and documents in compliance with international and regional maritime conventions whether or not Nigeria is a party to the conventions and that such certificates . and documents are current and valid; and (j) the foreign vessel meets all safety and pollution requirements imposed by Nigerian law and any international convention in force.

(2) In making a determination referred to in Sub clause (1), the Minister may request from the applicant for the license to which the determination relates, and from the owner of any Nigerian vessel to which the determination relates, such information and documentation as the ministry may deem necessary.

(3) The issuance of a license pursuant to Sub clause (1) does not affect the application to such foreign vessels of any Nigerian law that imposes safety or pollution prevention requirements in respect of vessels.

(4) The license issued under Sub clause (1) shall be carried on board the vessel at all times.

17. - (1) The Minister may issue a license under Clause 16 subject to any terms and conditions that the Minister considers appropriate, including, without restricting the generality of the foregoing terms and conditions respecting:

(a) the service or activity that is to be performed by the foreign vessel to which the license relates;

(b) the place or places where the foreign vessel may perform that services or activity.

(2) Any license granted under Clause 16 shall be for a fee and the Minister shall, by a notice in the Gazette specify the amount of the license fee and the terms thereof.

18. -Every license issued pursuant to Clause 16 to a foreign vessel shall set out the period of time for which it is valid, which period shall not exceed one (1) year and/or the term of any certificate or document referred to in Clause 16 (1) (e) provided that the license term shall not in any circumstance exceed one year.

19. The Minister may by order, suspend or cancel a license or vary the terms and conditions of a license where:

(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;
Or

(b) there has been a contravention of or failure to comply with any term or condition to which the license is subject;

(c) it is expedient to cancel, suspend or vary the license or permit for reasons of national or public interest.

20. Where it is deemed expedient to grant a license in conformity with the provision of this Act, the Minister shall impose a tariff on the vessel as a condition for granting the Waiver.

21. The Minister shall immediately after the commencement of this Act, establish and publish the criteria and guidelines for the issuance of licenses under this Act.

22. It shall be an offence for any foreign owned and foreign crewed vessel to participate in the domestic coastal trade without the license and authorization required by the provisions of this Act.

PART III - REGISTRATION

23. - (1) Notwithstanding the provisions of any other laws and subject to Clause 52 every vessel intended for use under this Act shall be duly registered by the Registrar of Ships in the Special Register for Vessels and Ship Owning Companies engaged in Cabotage and shall meet all the requirements for eligibility as set forth under this Act and the Merchant Shipping Act and its amendments to the extent that the said Merchant Shipping Act is not inconsistent with the provisions of this Act.

(2) Every vessel intended for use in the domestic trade whether for coastal or inland waters shall obtain all the applicable licenses and permits as shall from time to time be determined by the Minister and the relevant Agencies of Government.

(3) In order to carry out its functions under this Act the Minister shall on a continuous basis collect information and keep records in the Special Register concerning the availability, characteristics and uses of Nigerian vessels.

(4) The Minister shall immediately after the commencement of this Act issue appropriate guidelines and criteria for the registration of bareboat chartered vessel in the Cabotage Register.

(5) Vessels eligible for registration under this Act includes (a) passenger vessels;

(b) crew boats;

(c) bunkering vessels;

(d) fishing trawlers;

- (e) barges;
- if) off-shore service vessels;
- (g) tugs:
- (h) anchor handling tugs and supply vessels;
- (i) floating petroleum storage;
- lj) dredgers;
- (k) tankers;
- (l) carriers; and
- (m) any other craft or vessels used for carriage on through or underwater of persons, property or any substance whatsoever.

24. Subject to Clauses 10, 11 and 12, no vessel shall be registered for use in the domestic trade unless the Minister is satisfied that:

. (1) The vessel is wholly and beneficially owned by Nigerian citizen(s) or by a company wholly or beneficially owned by Nigerian citizen(s);
 (a) a vessel or company is wholly or beneficially owned by Nigerian citizen(s) where all the shares in the vessel and the company are held by Nigerian citizen(s) free from any trust or obligation in favour of any person not a citizen of Nigeria;

(2) The vessel is on bareboat charter to Nigerian citizen(s) and is under the full control and management of Nigerian citizen(s) or a company wholly and beneficially owned by Nigerian citizen(s) in terms of Sub clause (l) (a).

(3) The vessel is owned by a company registered in Nigeria and the percentage of shares in the company owned by Nigerian citizen is not less than 60 per centum:

(a) within the meaning of this Act, no vessel shall be registered for use in the domestic trade unless the controlling interest in the company is owned by Nigerian citizen(s);

(b) the controlling interest shall not be deemed to be vested in Nigerian citizens

(i) if the title to a majority of the shares thereof or 60 per centum are not held by such citizens free from any trust or fiduciary obligation in favour of any person not a citizen of Nigeria; or

(ii) if the majority of the voting power in such company is not held by citizen of Nigeria; or

(iii) if through any contract or understanding it is so arranged that more than 40 per centum of the voting power may be exercised, directly or indirectly, on behalf of any person who is not a . citizen of Nigeria; or

(iv) if by any means whatsoever control of any interest in the company is excess of 40 per centum is conferred upon or permitted to be exercised by any person who is not a citizen of Nigeria.

(4) Any foreign vessel licensed in compliance with Part II of this Act;

(5) The vessel is exclusively manned by Officers and crew of Nigerian citizenship except where Clause 11 applies.

(6) The vessel possesses 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.

25. In the performance of its duties under this Part, the Proof o~.

Minister shall take due care and carry out adequate investigation owners Ip.

to ascertain the true ownership of vessels and ship owning companies and shall issue guidelines for determination thereof which shall include:

(a) the last certificate of registration of the vessel; and (b) the Bill of Sale; and (c) the owner of shares in the company applying to be registered; and (d) the apportionment of shares in the vessel; and (e) a certificate under oath sworn to in a court of superior records by the owner, its dully authorized officer or agent establishing that such applicant has complied with the conditions of this Act; and (j) affidavit or statutory declaration by the owners of the owning company sworn to in a court of superior records stating their shares and the capacity in which the shares are held; and (g) such further requirements as the Minister may specify.

26. Any vessel registered, granted a license or permit in accordance with the provisions of this Act shall be deleted from the registry where it is determined that

(a) a subsequent change in the ownership structure of the vessel or the owning company as the case may be has contravened the provisions of this Act under which the vessel was registered under the relevant provisions of the Merchant Shipping Act;

(b) the required certification and documentation has expired or it is no longer eligible for registration under the Merchant Shipping Act or under this Act.

27-(1) In the case of ship mortgage or ship financing, by financial institution, a vessel would be eligible for registration for ship under this Act where the following requirements are satisfied: financing.

(a) the vessel must be under charter for a term not less than three years; and

(b) the charterer/mortgagee must meet the citizenship requirement for operating vessels in the domestic coastal trade under Parts I and III of this Act.

(2) In addition to Sub clause (1) the charterer or mortgagee shall before registration produce an affidavit sworn to by the financial institution in a court of superior records certifying that the financial institution's interest is solely and primarily a financial investment without the ability and intent to contract the vessel's operation to a non-citizen and that it does not derive a majority of its aggregate revenue from the operation or management of the vessel

28. The Minister shall immediately after the commencement of this Act issue regulations and guidelines which shall permit foreign owned vessels engaged in the domestic trade, a temporary registration in the Nigerian Registry, which registration shall cover the duration of the contract for which the vessels are employed.

29. Any vessel registered under the Nigerian Registry at the date of coming into force of this Act, and who is over fifteen (15) years old shall continue to be eligible for participation in the coastal trade for a period of five (5) years after the commencement of this Act provided the vessel possess a certificate of registry and a certificate of seaworthiness from recognized classification authority.

PART IV - ENFORCEMENT

30. -(1) For the purpose of enforcing this Act, the Minister shall maintain in the office of the Registrar of Ships a separate Register for vessels intended for use in the domestic coastal and inland waters trade under this Act to be called Special Register for Vessels and Shipping Companies Engaged in Cabotage Trade.

(2) Notwithstanding the provisions of any other laws, the Register for vessels involved in the coastal and inland waters trade under Sub clause (1) of this Clause shall be for both large and small vessels.

31. - (1) The Minister shall immediately after the commencement of this Act create an Enforcement Unit within the National Maritime Authority with appropriate operational guidelines and shall designate the officers in that Unit as Enforcement Officers.

(2) The National Maritime Authority shall issue every Enforcement Officer with an identity Card of that designation which specifies the Officer's name and office, and on which appears a recent photograph of the Enforcement Officer.

(3) In carrying out the duties and functions of an Enforcement Officer under this Act, an Enforcement Officer shall, if so requested, produce the identity referred to in Sub clause (2) of this Clause to the person appearing to be in charge of any ship in respect of which the Enforcement Officer is acting.

32. - (1) Where an enforcement officer believes on reasonable grounds that a vessel has contravened the provision Officers.

of this Act, the enforcement officer may stop and board the vessel, detain the vessel or its officers or both and, with a warrant, search the vessel and seize anything found in or on the vessel that the enforcement officer believes on reasonable grounds will afford evidence with respect to any contravention of the Act.

(2) Notwithstanding the provisions of any existing Act, an enforcement officer may carry out the powers under Sub clause (1) of this Clause without a warrant if by reason of exigencies it would not be practicable to obtain a warrant.

(3) While carrying out any of the powers under this clause, an enforcement officer may (a) require the owner, master or any other person who may have possession of the official log book of the ship, or any other document or paper that may provide evidence of the contravention, to produce, for inspection or for the purposes of obtaining

copies thereof or extracts therefrom, the log book or other document or paper; and (b) require the master of such to give such information relating to the ship, cargo, stores, crew, passengers or voyage as he may consider necessary; and (c) require the master or any other person found on board the ship to give all reasonable assistance in the power of the master or other person, as the case may be, to enable the enforcement officer to carry out the enforcement officer's duties and functions under this Act; and (d) where necessary enlist the assistance of the Nigerian Customs Service, the Nigerian Navy, the Nigerian Police and any other law enforcement Agencies as he may deem necessary.

33. -(1) Where an enforcement officer believes on reasonable grounds that an offence under this Act has been committed by or in respect of a vessel, the enforcement officer may without a court order by a reason of exigent circumstances make a detention order in respect of the ship.

(2) A detention order made under Sub clause (1) shall as soon as it is practicable be registered in court.

34. Notwithstanding the provisions of any other laws, no port clearance shall be granted to a vessel engaged in domestic coastal shipping unless the owner, charterer, master or agent satisfies the proper customs or such other authority authorized to issue port clearance that the vessel is licensed to engage in domestic shipping or has the prescribed waiver.

35. Any person engaged in the business of employing vessels for the domestic coastal trade shall specify and publish all the requirements to be satisfied with respect to the employment of vessels.

PART V -OFFENCES

36. -(1) Where a vessel contravenes Clauses 2, 3,4 and 5 the vessel is guilty of an offence against this Act and shall be liable on conviction to a fine not less than N10,000,000.00 and or forfeiture of the vessel involved with the offence or such higher sum as the Court may deem fit.

(2) A vessel that contravenes Clause 23 commits an offence against this Act and shall be liable on conviction to a fine not less than N 5,000,000.00

(3) A vessel that contravenes Clause 22 commits an offence against this Act punishable on conviction to a fine not less than N15,000,000.00 and or forfeiture of the vessel or such higher sum as the Court may deem fit.

37. -Any person who without reasonable excuse, fails to comply with a requirement made, or direction given, by an enforcement officer under this Act commits an offence and shall on conviction if it is an individual, be liable to a fine not less than N100,000.00 and if the offence is committed by a body corporate, be liable to a fine not less than N5,000,000.00

38. - (1) A person shall not, in purported compliance with a requirement under this Act or for any other reasons, provide to the relevant governmental authorities or an enforcement officer:

(a) information that is, to the person's knowledge, false or misleading in a material particular; or

(b) any document containing information that is, to the person's knowledge, false or misleading in a material particular. , .

(2) Any person who contravenes Sub clause (1) shall be guilty of an offence and on conviction shall in addition to existing criminal sanctions, if it is an individual be liable to a fine not less than N500, 000.00, and if it is a body corporate to a fine not less than

N15, 000,000.00 and or forfeiture of the vessel involved with the offence.

39. Where an offence is committed by a vessel under Clauses 2,3,4,5 and 22 on more than one day or is continued by the vessel for more than one day, it shall be deemed to be a separate offence for each day on which the offence is committed or continued.

40. (1) Where an offence is committed under this Act or regulations made under it by a vessel, a ship owning company or a body of persons:

. (a) in the case of a vessel, the shipping company responsible for the vessel or the captain of the vessel shall be deemed guilty of the offence;

(b) in the case of a ship owning company or a body corporate other than a partnership, every director or an officer of the company or body shall also be deemed to be guilty of the offence; and (c) in the case of a partnership every partner or officer of that body shall also be deemed to be guilty of that offence.

(2) Any activity engaged in on behalf of a body corporate or a natural person by a director, officer or agent of the body, or an officer or agent of the person, within the scope of his or her actual or apparent authority is to be taken, for the purposes of a prosecution for an offence against this Act, to have been engaged in also by the body or person.

(3) A reference in this section to a director of a body corporate is to be read as including a reference to a member of a body corporate incorporated under the laws of the Federal Republic of Nigeria.

(4) An officer may be prosecuted and convicted of an offence under Subclause (1) whether or not the body corporate has been prosecuted for or convicted of the offence.

(5) In this section an officer in relation to an offence committed by a body corporate, means (a) a director of the body corporate or other person (however described), responsible for the direction, management and control of the body corporate; or (b) any other person who is concerned in, or takes part in, the management of the body corporate and whose responsibilities include duties with respect to the matters giving rise to the offence.

41. (1) Any person who contravenes any provisions of this Act shall be strictly liable for such offence.

(2) Any person who contravenes any provision of this Act or any regulations made there under commits an offence and shall on conviction, where no specific penalty is prescribed thereof, be liable to a fine not less than N500,000.00

42. Jurisdiction over the matters and offences referred to Jurisdiction. in this Act lie with the Federal High Court.

PART VI - CABOTAGE VESSEL FINANCING FUND

43. - (1) The Cabotage Vessel Financing Fund ("Fund") is hereby created.

(2) The purpose of the Fund shall be to promote the development of indigenous ship acquisition capacity by providing financial assistance to Nigerian operators in the domestic coastal shipping.

44. There shall be paid into the Fund:

(a) a surcharge of not more than 2 .per centum of the contract sum performed by any vessel engaged in the coastal trade;

(b) a sum as shall from time to time be determined and approved by the National Assembly;

(c) monies generated under this Act including the tariffs, fines and fees for license and waivers;

(d) such further sums accruable to the Fund by way of interests paid on and repayment of the principal sums of any loan granted from the Fund.

45. The beneficiaries of the Fund shall be Nigerian citizens and shipping companies wholly owned by Nigerians-

46. The Fund shall be collected by the National Maritime of the fund. Authority and deposited in commercial banks and administered under guidelines that shall be proposed by the Minister and approved by the National Assembly

PART VII - MISCELLANEOUS

47. -(1) The Minister shall, in accordance with this Act and as soon as practicable after the commencement of this Act, and in particular, may make regulations prescribing the criteria to be applied by the Ministry for the making of the determinations referred to in Clauses 10, 11, 12, 13, 16 and 17

(2) The Minister may from time to time make regulations for all or any of the following purposes:

(a) prescribing the manner or content of applications, notices, or any documentation or information as may be required under this Act;

(b) prescribing the fees payable or the methods for calculating fees and recovering costs in respect of applications for permits, licenses, loans and guarantees or other matters under this Act;

(c) prescribing the amount, methods for calculating the amount, and circumstances and manner in which holders of licenses and permits shall be liable to pay for participation in the domestic coastal trade under this Act;

(d) requiring the holders of permits and licenses granted for any activity under this Act, to keep records for any purpose under this Act, and prescribing the nature of records, information, and returns, and the form, manner, and times in or at which they shall be kept or furnished;

(e) requiring any person engaged in the employment of vessels for the domestic coastal trade to publish their pre-tender qualifications with respect to the desired vessels within a prescribed period;

(j) providing for any other such matters as are contemplated by, or necessary for giving full effect to, this Act for its due administration.

48. Licenses, waivers, approvals or permits referred to in this Act shall be carried on board the vessel at all times.

49. The Minister may in times of economic crisis or Requisition national emergency, by order, compel vessel registered under this Act to provide essential services to sustain basic needs of people or to fulfill existing multi-lateral agreements.

50. Where any sum of money is mentioned in this Act, it shall be the value of such sum of money at the date of the coming into force of this Act. The value of such money shall be determined by the Central Bank of Nigeria from time to time and may be made public as and when required by the courts

51. - (1) The provisions under this Act shall be enforced from the first anniversary of the day on which this Act comes into force, that is to say, 1 (one) year after the Commencement Date of this Act.

52. In the case of any vessel that, immediately prior to the Vessels with coming into force of this Act, is operating pursuant to a valid coastal trade license under the Merchant Shipping Act or Sea Fisheries Act, Cap. 404 Laws of the Federation of Nigeria, 1990, the provisions of this Act shall apply to that vessel in respect of any activity authorized to be performed by the license from the day that license would otherwise have expired had this Act not come into force.

53. - (1) Any provision of any existing laws with respect to the registration of vessels ownership, size and type of vessels, participation in Nigerian domestic coastal and inland waters trade in whatever form that is inconsistent with the provisions of this Act is hereby repealed in so far as it affects matters under this Act and in particular the under-listed laws and

and regulations:

(a) Section 5, Merchant Shipping Act. Cap. 224, Laws of the Federation of Nigeria 1990;

(b) Section 1 (2) Merchant Shipping (Manning) ,Regulations Cap. 224, Laws of the Federation of . Nigeria 1990;

(c) Section 1 Merchant Shipping (Licensed Ships) Regulations Cap. 224. Laws of the Federation of Nigeria, 1990.

(2) The First Schedule to the Finance (Control and Management) Act, Cap. 144. Laws of the Federation of Nigeria, 1990 is amended by the insertion in Part II paragraph 9 of the following:

"Cabotage Vessel Financing Fund" The Fund established by Section 43 of the Coastal and Inland Shipping (Cabotage) Act, 2003.

54. All of the provisions of the Merchant Shipping- Act and other relevant legislations and regulations that are in force immediately before the commencement of this Act shall, so far as they are consistent with this Act continue to be in force.

55. Except as expressly provided in this Act, nothing in this Act shall affect the rights of any party to any proceedings commenced in any court on or before the commencement of this Act.

56. In this Act, unless the context otherwise provides-

"Cargo" means goods carried in or on a vessel whether or not of commercial value and includes livestock;

"coastal trade" or "cabotage" means

(a) the carriage of goods by vessel, or any other mode of transport, from one place in Nigeria or above Nigerian waters to any other place in Nigeria or above Nigerian waters, either directly or via a place outside Nigeria and includes the carriage of goods in relation to the exploration, exploitation or transportation of the mineral or non-living natural resources of Nigeria whether in or under Nigerian waters;

(b) the carriage of passengers by vessel from any place in Nigeria situated on a lake or river to the same place, or to any other place in Nigeria, either directly or via a place outside Nigeria to the same place without any call at any port outside Nigeria or to any other place in Nigeria, other than as an in-transit or emergency call, either directly or via a place outside Nigeria;

(c) the carriage of passengers by vessel from any place in Nigeria to any place above or under Nigerian waters to any place in Nigeria, or from any place . above Nigerian waters to the same place or to any other place above or under Nigerian waters where the carriage of the passengers is in relation to the exploration, exploitation or transportation of the mineral or non-living natural resources in or under Nigerian waters; and

(d) the engaging by vessels in any other marine transportation activity of a commercial nature in Nigerian waters and, the carriage of any goods or substance whether or not commercial value within the waters of Nigeria.

"enforcement officer" means a person so designated to be an enforcement officer for the purposes of this Act;

"enforcement unit" means the department within the National Maritime Authority charged with the responsibility of enforcing the provisions of this Act;

"Exclusive Economic Zone" has the meaning given to it under the Exclusive Economic Zone Act, Cap. 116 Laws of the Federation of Nigeria 1990;

"foreign vessel" means a vessel other than a Nigerian vessel;

"hull" means the shell, or outer casing, and internal structure below the main deck which provide both the floatation envelope and structural integrity to the vessel in its normal operation;

"in-transit call" means any call, other than an emergency or technical call, by a vessel at any place where passengers go ashore temporarily but re-board the vessel before the vessel leaves that place or are transported by land to another location to re-board the same vessel and include cargo not discharged at the transit call;

"Inland waters" has the meaning given to it under the National Inland Waterways Authority Act, 1997;

"license" means a document, issued pursuant to this Act, authorizing a foreign ship or vessel. to be registered for participation in the coastal trade while in Nigerian waters;

"master", in relation to a vessel, has the same meaning as in the Merchant Shipping Act, Laws of the Federation of Nigeria 1990;

"Minister" means the head of the Ministry for the time being charged with the responsibility for matters relating to shipping and Ministry has the corresponding meaning;

"Nigerian citizen" means a citizen of Nigeria as defined in the Nigerian constitution;

"place above Nigerian waters" in the context of "coastal trade" means a place above Nigerian waters and includes any vessel, offshore drilling unit, production platform, artificial island, sub-sea installation, pumping station, living accommodation, storage structure, loading or landing platform, dredge, floating crane, pipe laying or other barge or pipeline and any anchor cable or rig pad used in connection therewith.

"wholly owned Nigerian vessel" means a vessel which is owned and registered in Nigeria and has the meaning given to it in Clause 6 of this Act;

"Nigerian vessel" means a vessel which is registered in Nigeria and has the meaning given to it in Clause 24 (1), (2) or (3);

"Nigerian waters" shall include inland waters, territorial waters or waters of the Exclusive Economic Zone (respectively, together or any combination thereof) and the meaning given to them by the National Inland Waterways Authority Act, 1997;

Territorial Waters (Amendment) Act, 1998; and the Exclusive Economic Zone Act, Cap. 116, Laws of the Federation of Nigeria 1990;

"owner", in relation to a vessel, includes the person having for the time being, either by law or by contract, the rights of the owner of the ship as regards the possession and use thereof;

"superstructure" means the main deck and any other structural part above the main deck;

"Territorial waters" has the meaning given to it under Territorial Waters (Amendment) Act, 1998;

"vessel" includes any description of vessel, ship, boat, hovercraft or craft, including air cushion vehicles and dynamically supported craft, designed, used or capable of being used solely or partly for marine navigation and used for the carriage on, through or under water of persons or property without regard to method or lack of propulsion;

57. This Act may be cited as the Coastal and Inland Shipping Short Title. (Cabotage) Act, 2003.

APPENDICES V

**Supplement to Official Gazette
Extraordinary No. 26. Vol 74,
11th May, 1987-Part A**

NATIONAL SHIPPING POLICY DECREE 1987

ARRANGEMENT OF SECTIONS

1. ESTABLISHMENT OF THE NATIONAL MARITIME AUTHORITY
2. COMPOSITION OF THE AUTHORITY
3. AIMS AND OBJECTIVES OF THE AUTHORITY
4. FUNCTIONS OF THE AUTHORITY
5. SPECIAL FUNCTIONS OF THE AUTHORITY
6. APPOINTMENT OF DIRECTOR-GENERAL AND OTHER STAFF OF THE AUTHORITY
7. CONDITIONS FOR GRANTING OF NATIONAL CARRIER STATUS TO SHIPPING COMPANIES.
8. USE OF CHARTERED VESSELS
9. CARRIAGE OF CARGO
10. PAYMENTS FOR SERVICES RENDERED IN NIGERIA SEAPORTS
11. FOREIGN EXCHANGE TO DEFRAY COST INCURRED IN EVACUATING EXPORT PRODUCE
12. MAINTENANCE OF NATIONAL CARRIER VESSEL AND OTHER NIGERIAN FLAG SHIPS
13. SHIP ACQUISITION AND SHIP BUILDING
14. EXPORTS AND IMPORTS
15. SHIPPING SERVICES ETC
16. FOREIGN EXCHANGE EARNINGS FROM SHIPS
17. PAYMENT TO FEDERAL MILITARY GOVERNMENT ON EARNINGS FROM SHIPS
18. CARGO CONTROL AND SHARING
19. REVOCATION OF NATIONAL CARRIER STATUS
20. ESTABLISHMENT OF A JOINT BOOKING OFFICE
21. ESTABLISHMENT OF BOOKING CENTRES
22. COMMISSION PAYABLE TO BOOKING CENTRE

- 23. FUND OF THE AUTHORITY
- 24. ANNUAL ESTIMATES, ACCOUNTS AND AUDIT
- 25. ANNUAL REPORTS
- 26. OFFENCE AND PENALTY
- 27. POWER TO MAKE REGULATIONS
- 28. INTERPRETATION
- 29. CITATION**

**DECREE NO. 10 (30th April 1987) commencement
THE FEDERAL MILITARY GOVERNMENT
hereby decrees as follows:**

**SECTION 1
ESTABLISHMENT OF
THE NATIONAL MARITIME AUTHORITY**

1. There is hereby established a body to be known as the National Maritime Authority (hereinafter in this Decree referred to as "the Authority").
2. The Authority shall be a body corporate with perpetual succession and a common seal and be able to sue and be sued in its corporate name.
3. The Authority shall exercise such functions and achieve such objectives as may be conferred upon it by this Decree.
- 4.

**SECTION 2:
COMPOSITION OF THE AUTHORITY**

**SCHEDULE
TENURE OF OFFICE**

1. The Authority shall consist of:-
 - a. A Chairman and 5 other members with wide experience in shipping and commercial matters to be appointed by the President, Commander-in-Chief of the Armed Forces on the recommendation of the Minister.
 - b. A representative of the Federal Ministry of Transport and Aviation.
 - c. a representative of the Federal Ministry of Finance;
 - d. a representative of the Federal Ministry of Justice,
 - e. a representative of the Federal Ministry of Trade; and
 - f. a representative of the Nigeria Navy

- (2) The provisions of the schedule to this Decree shall have effect with respect to the matters therein mentioned.

SECTION 3:

AIMS AND OBJECTIVES OF THE AUTHORITY

It shall be the objective of the Authority to:-

- a. correct any imbalance in the Nigerian shipping trade for the purpose of implementing the provisions of the UNCTAD CODE OF CONDUCT for Liner Conferences especially to **National Shipping Policy - Decree 10,1987** the ratio of 40: 40: 20 in respect of carriage of goods to Nigerian ports;
- b. improve Nigeria's balance of payment position by enhancing the earning and conservation of foreign exchange from the shipping industry;
- c. use the national shipping policy as instrument of promoting the export trade of Nigeria and thus accelerate the rate of growth of the national economy;
- d. ensure the greater participation of indigenous shipping lines in liner conference thereby influencing the decision making processes of such liner conferences serving Nigerian international sea-borne trade;
- e. promote the acquisition of shipping technology by creating and diversifying employment opportunities in the shipping industry, through the stimulation and protection of indigenous shipping companies;
- f. assist in the economic integration of the West African sub-region;
- g. offer protection to Nigerian vessels flying the nation's flag on the high seas and world seaports;
- h. increase the participation by indigenous Nigerian shipping lines in ocean shipping through the application of the provisions of the UNCTAD Code on General Cargo and by entering into bilateral agreements, or other suitable arrangements.
- i. encourage the increase of ownership of ships and the achievement of indigenous skills in maritime transport technology;

- j. achieve a systematic control of the mechanics of sea transportation; and
- k. promote the training of Nigerians in maritime transport technology and as seafarers.

SECTION 4: FUNCTIONS OF THE AUTHORITY

The functions of the Authority shall be:-

- a. to co-ordinate the implementation of the national policy on shipping as may be formulated from time to time by the **National Shipping Policy - Decree 10,1987** Federal Military Government;
- b. to ensure that Nigerian national carriers exercise fully Nigeria's carrying rights of at least 40 percent of the freight in revenue and volume of the total trade to and from Nigeria;
- c. to grant national carrier status to indigenous shipping lines;
- d. to monitor the activities of vessels of the companies granted national carrier status;
- e. to grant assistance to indigenous companies for fleet expansion and ship ownership;
- f. to regulate liner conferences and national carriers; and
- g. to perform such other functions as may be required to achieve the aims and objectives of this Decree or any national shipping policy as may be formulated by the Federal Military Government pursuant to this Decree.

SECTION 5: SPECIAL FUNCTIONS OF THE AUTHORITY

- (1) The Authority shall investigate, determine and keep current records of:-
 - a. ocean services, routes and lines from Nigerian ports to foreign markets as may be determined by the Minister to be essential for the promotion, development, expansion and maintenance of the foreign commerce of Nigeria.
 - b. bulk cargo carrying services for the purposes of promotion, development, expansion and maintenance of the foreign commerce of Nigeria, the

national defence and other national requirements provided by Nigerian flag vessels whether or not operating on a particular ocean service, route or line;

c. the type, size, speed, method of propulsion and other requirements of vessels which should be employed :-

i. in such services or on such routes or lines and the frequency and regularity of the

sailings of such vessels, with a view to furnishing adequate, regular, certain and permanent service; or

ii. to provide the bulk cargo carrying services necessary for the promotion, maintenance and expansion of foreign commerce of the Federal Republic of Nigeria and its national defence or other national requirements whether or not such vessels operate on a particular service, route or line;

d. the relative cost of construction of comparable vessels in Nigeria and in foreign countries.

e. the relative cost of managing the commercial aspects of the shipping industry such as scheduling, chartering in or chartering out of vessel, allotment of cargo space, cargo pricing and cargo soliciting, marine insurance, maintenance, repairs, wages and subsistence of officers and crew, and all other items of expense, in the operation of comparable vessels under the laws, rules, and regulations of Nigeria and under those foreign countries whose vessels are substantially competitors of any such Nigerian vessels.

f. the extent and character of aid and subsidies granted by foreign governments to their merchant marine;

g. the number, location and efficiency of shipyards existing on the date of the promulgation of this Decree or thereafter built in Nigeria;

h. new designs, methods of construction and types of equipment for vessels;

i. the possibilities of promoting the carrying of the foreign trade of Nigeria in Nigerian vessels; and

- j. inland water transportation including their relation to transportation by land and air.
- (2) The Authority shall for the purposes of sub-section 1 (a) of this section consider and give due weight to:-
- a. the cost of maintaining the ocean lines;
 - b. the probability that the ocean lines cannot be maintained except at a heavy loss disproportionate to the benefit accruing to foreign trade;
 - c. the numbers of sailings and the types of vessels that should be employed in the oceans lines;
 - d. the benefit the maintenance of the ocean line may afford to the foreign trade of Nigeria; and
 - e. any other facts or conditions which the Authority may from time to time determine as necessary.

SECTION 6: APPOINTMENT OF DIRECTOR GENERAL AND OTHER STAFF OF THE AUTHORITY

- (1). There shall be for the Authority a Director General who shall be the Chief Executive and who shall be appointed by the President, Commander in Chief of the Armed Forces.
- (2). The Director General shall be responsible for the day to day administration of the Authority.
- (3). The Authority shall appoint a Secretary to the Authority who shall keep the records and conduct the correspondence of the Authority and perform such other duties as the Authority or the Director General may from time to time assign to him.
- (4). Without prejudice to the generality of sub-section (1) of this section, the Authority shall have power:-

- (a). to appoint such other staff as it may determine.
- (b). to pay its staff such remuneration and allowances as it may, with the approval of the Minister determine;
- (c). to pay in respect of any such pensions and gratuities as are payable to persons of equivalent grade in the civil service of the Federation: and
- (d). to give loans to its staff for purposes approved by the Minister.

SECTION?:
CONDITIONS FOR GRANTING OF NATIONAL
CARRIER STATUS TO SHIPPING COMPANIES.

(1) The Authority may grant national carrier status to a shipping company if:

- (a). Nigerian individuals or enterprises fully owned by Nigerian individuals have at least 60 per cent of its equity shares and the company is registered in Nigeria.
- (b). the vessels owned by the company operate on the deep sea and not on the Nigerian coastal or inland waterways;
- (c). the head office of the company is located in Nigeria and its management and control is directed from its Nigerian head office.
- (d). the company owns at least one ocean-going vessel of not less than 5,000 net registered tonnage;
- (e). the terms and conditions of the employment of seafarers engaged by the company are in conformity with Nigerian laws and accepted international rules and standards;
- (f). the vessels of the company are registered in the Nigerian Register of ships and the vessels satisfy all conditions stipulated in the Nigerian Merchant Shipping Act 1962 as amended, and (1962 No 30.)

- (g). 100 per cent of the crew and at least 75 percent of the shipboard officers including captain and chief officer and wherever possible chief engineers, are Nigerians.

SECTION 8: USE OF CHARTERED VESSELS

- (1). The Authority may allow national carriers to use chartered vessels when vessels belonging to the national carriers are insufficient for the cargo available.
- (2). Nigerian operators wishing to charter vessels shall make national carriers operating National flag vessels their first choice and consider other vessels only when vessels are not available as stipulated in sub-section
(1) of this section.

SECTION 9: CARRIAGE OF CARGO

- (1). Subject to sub-section (2) of this section, and in addition to cargo as defined under the UNCTAD CODE OF CONDUCT for liner Conference, national carriers shall have the right to participate in the carriage of bulk cargo (dry or wet)
- (2). The participation of national carriers in the carriage of bulk cargoes to and from Nigeria shall be subject to carriage right of not less than 50 per cent of such cargoes.
- (3). All other cargo to and from Nigeria outside the jurisdiction of liner conferences shall be subject to the same principles of cargo sharing as stipulated in sub-section (2) of this section and subject to such exceptions as the Federal Military Government may from time to time determine.
- (4). Cargo sharing shall cover the totality of available trade including bulk dry and wet cargo and shall not be limited to the UNCTAD 40:40:20 formula.
- (5). Ships owned or hired by Nigerian national carriers shall carry at least 50

per cent of the cargoes generated through technical assistance or international aid.

- (6). The Authority shall determine ways and means of involving national carriers in the carriage of crude petroleum in Nigerian vessels.

SECTION 10:
PAYMENT FOR SERVICES
RENDERED IN NIGERIAN SEAPORTS:

- (1). All payments for services offered and rendered to foreign vessels at Nigerian seaports shall be paid for in foreign exchange transferred into Nigeria through the Central Bank of Nigeria.
- (2). It shall be mandatory on the companies operating foreign vessels to show evidence of transfer of the funds at the point of entry.
- (3). Nothing in sub-section (1) of this section shall be construed as compelling national carriers to make payments for services offered and rendered to national carriers vessels at Nigerian seaports in foreign exchange.

SECTION 11:
FOREIGN EXCHANGE TO DEFRAY COST INCURRED
IN EVACUATING EXPORT PRODUCE

- (1). Nigerian shipping companies may apply to the Authority for approval for the foreign exchange component to defray the cost legitimately incurred by them in the evacuation of export produce.

SECTION 12:
MAINTENANCE OF THE NATIONAL CARRIER
VESSEL AND OTHER NIGERIAN FLAG SHIPS

- (1). All national carrier vessels and other Nigerian flag ships shall be serviced, repaired and maintained where practicable, in Nigeria.
- (2). Where it is not practicable for a national carrier vessel or any other

Nigerian flag ship to be serviced, repaired or maintained in Nigeria, the owners of such vessel shall obtain a certificate to that effect from the Authority.

- (3). Foreign ships participating in the carriage of Nigerian trade may avail themselves of the Nigerian facilities in the maintenance and repairs of their vessels.

SECTION 13: SHIP ACQUISITION AND SHIP BUILDING

- (1). There is hereby established a fund to be known as the Ship Acquisition and Ship Building Fund (hereinafter referred to as "the Fund").
- (2). The fund shall be administered by a committee composed of members of the Authority.
- (3). The fund shall be applied to assist Nigerians in the development and expansion of a national fleet
- (4). The minister shall lay down the general procedure and guidelines for the administration and the carrying into effect the purposes of the Fund.

SECTION 14: EXPORT AND IMPORT

- (1). National carriers shall have exclusive right to the freight belonging to the Federal, State and Local Governments including Federal and State owned companies and parastatals except where such freight is exempted by the Minister.
- (2). Federal Military Government shall from time to time issue guidelines on incentives to be granted to Nigerian shippers who use the national carrier vessels for the carriage of their cargoes.
- (3). All public sector contracts for the importation and exportation of goods shall respectively be on F. O. B. and C and F basis.

- (4). The Minister may from time to time grant exceptions on certain imports and exports from the operation of sub-section (1) of this section.
- (5). Shipping companies benefiting from the provisions of this Decree shall provide regular services on their respective routes to ensure adequate coverage of Nigeria's export trade.

SECTION 15: SHIPPING SERVICES ETC.

- (1). The Authority may make recommendations to the Federal Military Government in respect of the ownership structure of vessels and other facilities for off-shore support services.

SECTION 16: FOREIGN EXCHANGE EARNINGS FROM SHIPS:

- (1). Notwithstanding anything to the contrary in any other enactment, as from the commencement of this Decree, the Federal Military Government shall allow indigenous shipping companies to keep 25 percent of their net foreign exchange earnings abroad to enable them off-set handling charges and any other costs incurred in respect of shipping services rendered by them.
- (2). The remaining 75 per cent of the net foreign exchange earnings of indigenous shipping companies shall be remitted through the Central Bank of Nigeria.

SECTION 17: PAYMENT TO FEDERAL MILITARY GOVERNMENT ON EARNINGS FROM SHIPS

- (1). Every shipping company operating in Nigeria shall be liable to a charge at the rate of two percent of gross earnings in respect of every outward or inward cargo carried by it.
- (2). The charge referred to in sub-section (1) of this section shall be

collected by the Authority on behalf of the Federal Military Government.

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- (3). The Minister may, after consultation with the Minister of Finance, make regulations for the implementation of this section.

SECTION 18:

CARGO CONTROL AND SHARING

- (1). The Authority shall ensure that Nigerian vessels carry Nigeria's share of cargo in volume and earnings in accordance with the provisions of this Decree or any other form of cargo sharing arrangement entered or agreed to the Authority or by the Federal Military Government.
- (2). For the purpose of cargo sharing, all Nigerian national carriers in a trade route shall be regarded as a single group of shipping lines.
- (3). The choice of Cargo control and sharing methods desired by this section shall be achieved by administrative arrangements.

SECTION 19:

REVOCATION OF NATIONAL CARRIER STATUS

The Minister on the recommendation of the Authority may suspend, or revoke the national carrier status of a company if the company fails to meet any of the conditions (including the training of Nigerian seafarers) or is inefficient and fails to correct the position within six months after receiving a notice in writing from the Authority.

SECTION 20:

ESTABLISHMENT OF A JOINT BOOKING OFFICE

- (1). The Authority shall establish a Joint Booking Office in any part of the world as the Authority may deem necessary for the purpose of co-ordinating the activities of the Authority abroad and to provide facilities for national carriers and other conference lines.
- (2). Except otherwise directed by the Minister, the Authority shall appoint a Nigerian to be the administrative head of the Joint Booking Office.
- (3). The administrative head of the Joint Booking Office shall be responsible to the Authority.

SECTION 21:
ESTABLISHMENT OF BOOKING CENTRES

The Authority may establish such other Booking Centres abroad as may permit the effective coverage of the Authority's functions under this Decree.

SECTION 22:
COMMISSION PAYABLE TO BOOKING CENTRE

The Minister shall, from time to time, fix the commission payable to the Booking Centres established pursuant to section 21 of this Decree after consultation with the Authority.

SECTION 23:
FUND OF THE AUTHORITY

The Authority shall establish a fund which shall consist of:

- (1). such sums as may be provided to it by the Federal Military Government for the running expenses of the Authority and all other assets from time to time accruing to the Authority,
- (2). such sums as may from time to time be lent to the Authority by any person, and
- (3). such sums as may be collected or received by the Authority from other sources either in the execution of its functions or in respect of any property vested in the Authority or otherwise howsoever.

SECTION 24:
ANNUAL ESTIMATES ACCOUNTS AND AUDIT

- (1). The Authority shall submit to the Minister not later than 30th June in each financial year an estimate of its expenditure and income during the next succeeding financial year.
- (2). The Authority shall keep proper accounts and proper records in relation thereto and shall prepare in respect of each financial year statement of accounts in such form as the Minister may direct.

- (3). The Authority shall within 6 months after the end of the financial year to which the accounts relate cause its accounts to be audited by auditors appointed from the list and in accordance with guidelines supplied by the Auditor-General of the Federation.

SECTION 25:

ANNUAL REPORTS

The Authority **shall** prepare and submit to the National Council of Ministers through **the** Minister, not later than 30th September in each financial year a report in such form as he may direct on the activities of the Authority during the immediately preceding financial year, and shall include in such report a copy of the audited accounts of the Authority for that year and the auditor's report thereon.

SECTION 26:

OFFENCE AND PENALTY

- (1). It shall be an offence punishable under this Decree for any company to fail to comply with any provisions of this Decree.
- (2). Any company which fails to comply with the provisions of this Decree shall be liable to a fine of not less than N50,000 or 15 per cent of the C.I.F. value of the freight transported or loaded, whichever is higher.
- (3). Any fine imposed pursuant to this section shall be paid to the Federal Military Government.

SECTION 27:

POWER TO MAKE REGULATIONS

The Minister may make regulations for the effective implementation **of** this Decree.

SECTION 28: INTERPRETATION

In this Decree except the context otherwise requires:-

"Authority" means the National Maritime Authority established pursuant to section 1 of this Decree.

"Minister" means the Minister charged with responsibility for transport matters;

"Ship" means a sea-going vessel not less than 5,000 gross registered tonnage.

SECTION 29: CITATION

This Decree may be cited as the National Shipping Policy Decree 10 of 1987

SCHEDULE TENURE OF OFFICE

- (1). Subject to the provisions of this paragraph, a member of the Board, other than a public officer shall hold office for a period of three years from the date of this appointment and shall be eligible for re-appointment for a further period of three years; thereafter he shall no longer be eligible for re-appointment.
- (2). A member of the Board other than a public officer may resign his appointment by a letter addressed to the Minister and the resignation shall take effect from the date of the receipt of the letter by the Minister.
- (3). The Minister may appoint any person who is a registered member of the relevant profession to be a temporary member during a long absence or the temporary incapacity from illness of any member; and that person, may while the appointment subsists, exercise the function of a member under this Decree.
- (4). The foregoing provisions of this section shall be without prejudice to the provisions of section 11 of the Interpretation Act 1964.

PROCEEDINGS OF THE AUTHORITY

- (1). Subject to the provisions of this Decree and of section 26 of the Interpretation Act 1964, the Authority may make standing orders regulating the proceedings of the Authority or of any committee thereof.
- (2). The quorum of the Authority shall be three and quorum of any committee of the Authority shall be determined by the Authority.
- (3). At any time while the office of the Chairman is vacant or the Chairman is in the opinion of the Minister temporarily or permanently unable to perform the functions of his office, the Minister may appoint a member of the Authority to perform the function of the Chairman during his absence.
- (4)
 - (1) Subject to the provisions of any applicable standing orders the Authority shall meet whenever summoned by the Chairman; and if the Chairman is required so to do by notice given to him by not less than four other members, he shall summon a meeting of the Authority to be held within twenty-one days from the date on which the notice is given.
 - (2). At any meeting of the Authority, the Chairman or, in his absence, the person appointed pursuant to paragraph- 4 of this Schedule shall preside but if both are absent the members present at the meeting shall appoint one of their members to preside at the meeting
 - (3). Where the Authority wishes to obtain the advice of any person on a particular matter, the Authority may co-opt him as a member for such period as it thinks fit, but a person who is a member by virtue of this sub paragraph shall not be entitled to vote at any meeting of the Authority and shall not count towards a quorum.
 - (4). Notwithstanding anything to the contrary, the first meeting of the Authority shall be summoned by the minister who may give such directions as to the procedure to be followed at that meeting as he may deem fit.

COMMITTEES

5.
 - (1) The Authority may appoint one or more committees to carry out, on behalf of the Authority, such of its functions as the Authority may determine.
 - (2) A committee appointed under this paragraph shall consist of the number of persons determined by the Authority and not more than one-

third of those persons may be persons who are not members of the Authority' and a person other than a member of the Authority shall hold office on the committee in accordance with the terms of the instrument by which he is appointed.

(3) A decision of a committee of the Authority shall be of no effect until it is confirmed by the Authority.

MISCELLANEOUS

6. (1) The fixing of the seal of the Authority shall be authenticated by the signature of the Chairman or of some other member authorised generally, or specially by the Authority to act for that purpose.

(2) Any contract or instrument which is made or executed by a person not being a body corporate, would not be required to be under seal may be made or executed on behalf of the Authority by any person generally or specially authorised to act for that purpose by the Authority.

MADE at Lagos this 30th day of April 1987.

MAJOR GENERAL I.B. BABANGIDA

President,

of the
Federal Republic of Nigeria.

Commander-in-Chief

Armed Forces,

EXPLANATORY NOTE

(This note does not form part of the above Decree but is intended to explain its purport)

The Decree establishes a National Maritime Authority to, amongst other things, co-ordinate and implement Nigeria's national shipping policy.

APPENDICES VI

NATIONAL MARITIME AUTHORITY

Adjudged to be the energizer of the nation's Maritime industry, the National Maritime Authority started operation on September 10, 1987 via the promulgation of the National Shipping Policy Decree number 10 of April 30, 1987. The National Maritime Authority is the apex maritime regulatory and promotional agency of the Nigerian government

BACKGROUND INFORMATION

Shipping in Nigeria could be traced back to later part of the 19th century when the Royal Niger Company, now known as UAC Plc, set up shop here in Nigeria to procure agricultural products for their parent company in the United Kingdom in 1884. The only means these products could be transported to the UK from Nigeria was by Sea via River Niger and River Benue from the hinter land through the Creeks. All within the southern part of Nigeria This really opened up Nigeria to the Western world in every aspect of trade As the volume of trade between Nigeria and the Western world increased so did shipping activities. It wasn't until 1950s that the British colonial rulers reckoned the issue of enacting enabling shipping laws to guide the shipping trace this was what gave rise to Nigerian Shipping Act in 1961 and was passed into law n 1962 is Act was in use for 28years before it was reviewed in 1990.

Then came the UNCTAD code for liner conferences on Cargo allocation and carriage. The 1961-Shipping Act could not address all the problems associated with the shipping business as a result of the coming to effect of this UNCTAD Code. There was then an urgent need to address the problem of Nigerian shippers and this resulted in the promulgation of the Nigerian Shippers Council Decree number 13 of 1978. But this decree could still not address the issue because of the increased activities in the shipping business the world over There was again another need to provide a legislation that would regulate and monitor the shipping industry in the country.

This objective was accomplished in 1987 when the government enacted another

decree called National Shipping Policy Decree number 10. It was this decree that gave birth to the National Maritime Authority (NMA), which has now become the apex maritime regulatory and promotional agency of government.

The Authority opened its door for business on September 10, 1987 in a small 8 room leased apartment located at #4 Lalupon Close, Obalende, Lagos. Within three months the Authority then moved to a better but still leased apartment at #15 Louis Solomon Close, Victoria Island, Lagos. It was in December of 1987. Then finally in December 1990 they were able to acquire and move to their own building called "MARITIME HOUSES" at Burma Road, Apapa, Lagos. Prior to 1987 when the Authority was established, the maritime industry in Nigeria was virtually in a confused state as everybody was doing whatever seemed right to them. There was no organization nor any direction, no properly laid down rules and development. To stem the tide of abuse, neglect and negative exploitation of the maritime industry by both local and foreign practitioners and shippers, NMA was established.

The policy that gave rise to NMA is a well-conceived document, covering all the essential details, but a lack of revision since 1987 has led to strategic disadvantages.

MISSION STATEMENT OF NMA

"To harmonize our maritime resources to the optimum, boosting the nation's economic base in the process and directly or indirectly creating jobs and improving the welfare of the seafarers and indeed the citizenry"

OBJECTIVES OF NMA

The objectives of NMA, which gave rise to its strategic direction are encapsulated in:

- (1) ensuring the active participation of Nigerian National Carriers in the lifting of cargoes to and from Nigeria;
- (2) Correcting the imbalance in shipping trade for the purpose of implementing provisions of the UNCTAD Code of Conduct for Liner

Conferences, especially the observance of the 40: 40: 20 in respect of goods to and from Nigeria;

- (3) Using the policy as an instrument for promoting economic integration of the West and Central African sub-region; and
- (4) Using the policy as an instrument for promoting policy and stimulating the export trade of Nigeria and thereby accelerating the economic

growth of the country.

The sum total of the relevant section of the decree of establishing NMA is for the development of indigenous capacity in the area of maritime delivery. When you look at it in terms of Cargo support as contained in section 7.9 12 of the Decree or you talk in terms of ship Acquisition Fund or Ship Building Fund which is contained in section 13. All these aggregated to the development of the indigenous capacity within the maritime zone.

SHIPPING ENVIRONMENT

Technological innovations, high customer demands and new trade patterns within the maritime industry have brought about a rapid change, globally.

Customers have become more sophisticated and are demanding for a better service. New Technological innovations have made modern ships bigger and faster. To compete favorably, the maritime industry operators must be prepared to deliver speedy, reliable and flexible services to meet the ever increasing customer demands. Since shipping is international in nature, whatever happens

in the global trend will definitely impact directly or indirectly on the domestic scene.

Available data showed that there was a marginal expansion of only 8% in 1995 in the volume of world merchandise export compared to 9.5% in 1994. A decrease of 1.5%. In the same year in question the total tonnages (Imports & Exports) handled at Nigeria ports shows a decrease of 24.4%. The revenue earned by the Authority in statutory 3% levy on gross freight stood at \$41,033,621.96 as against the 1994 earning of \$39,967,995.18. There was therefore an improvement in earnings of 26% over 1994 figure. The Liberal

foreign exchange policy of the Federal Government has attracted or boosted more trade into Nigeria and also enabled exporters to plan their operations. The collapse of the Conferences Lines, as contained in the UNCTAD Code for Liner Conferences impacted negatively on the shipping operation in Nigeria and other parts of Africa.

A shipping conference is a collection of shipping companies operating on a particular shipping route agreeing on freight and other things and sharing of the proceeds of the freight. It could be an open conference or a closed conference. A closed conference is tantamount to having all the shipping companies operate

as one shipping line.- A conference is for a particular country or region. For example, United Kingdom West African Lines Conference (UKWAL), Far East West African Lines Conference (FEWAL) etc. A conference is an agreement among shipping lines. They queue up and carry cargoes one after the other. In the surface it seems they don't compete with each other but there is a subtle competition when they share the profits according to the costs. They first of all take away the cost of the conference and then give it to the shipping companies according to how many runs they made. If a country has one ship, it is the number of the runs it has that it is going to get paid for after the cost has been taken away even though you have the staff of the various shipping lines working for the conference.

ORGANIZATION STRUCTURE OF NMA

The National Maritime Authority as the organ of government has been structured into six (6) departments. It is structured in the same fashion as any other parastatal of the government. There also exists seven (7) units within these six departments. What is currently in place is a hierarchical structure with the Board of Directors being the highest decision making body within the Authority. There is also the Director General (D -G) who reports directly to the board, and himself also a member of the board.

There are six directors reporting to the Director - General and each heading a department. These departments are Administration and Personnel Services department, Technical Services department. Planning, Research and Statistics

department, Commercial Operations department, Finance and Investment department, and Legal and Secretarial Services department There is also a management team put in place for the daily running of the Authority's affairs.

ADMINISTRATION AND PERSONNEL SERVICES:

The department has two major units which have been broken down to Personnel

and Records, Training and Welfare, General Services, Transport Administration and Insurance functions This department handles, as stated above, the general administration of the Authority and recruitment The department takes care of the human capital development of the 835 strong staff of the Authority This is achieved through local overseas training.

In order to ensure the smooth operation workers welfare are paramount. Buses have been provided to convey workers to and from work. They are well paid salary wise, and good incentives provided to motivate the staff.

PLANNING. RESEARCH & STATISTICS

According to Adejare Shobayo, the Director in charge, this department is regarded as the "think tank" of the Authority. It is involved in corporate planning and budget coordination. The department handles, in addition to the above, the implementation of approved corporate plans among other functions. Pre-shipment inspection, monitoring and supervision; organization of the conferences seminars and workshops; and Examination and Evaluation of consultancy both internally and externally all fall within this department.

It should be mentioned here that this department has been split into two divisions; namely: Planning division and Research and Statistics division. The above listed functions fall under planning division while the Research and statistics division involve compilation, analysis and interpretation of the Authority's data; compilation and analysis of wet Cargo data; and collection of the statistical data, among many other functions

COMMERCIAL OPERATIONS:

This department compiles cargoes from various conferences NMA still works under the conference through AMWAL UKWAL FAWAC FEWAC and MEWAC. The commercial department is primarily in charge of revenue generation.

The more cargoes are attended to at the Nations ports the more revenue is generated because of the 3% levy paid lay shippers. The total amount Generated in 1995 from the statutory levy from both wet and dry cargo operations stood at **\$41,003,621**. A marginal increase of **2.6%** from the previous year.

FINANCE AND INVESTMENT: This department ensures the effective functioning of the accounting system put in place in the authority. They are responsible for treasury, budget and investments. The authority, through the finance and investment department invested heavily in property development within and outside Nigeria. Not only that, the authority spent **N50 million** to acquire more shares in **LEGON, FSB** International and **First Bank Plc** in 1995.

LEGAL AND SECRETARIAL SERVICES: Some of the functions of the legal department include preparation of the authority's title to properties, Lease agreements. Contract agreement. Vetting of insurance bonds and charter party agreement. Others include preparation of Deed of indemnity for shipping companies. Apart from the legal activities, they also have other administrative functions such as registration of shipping companies/Agents, perform secretarial services to committees, and registration of contractors. In addition to all of the above functions, the legal department do generate revenue for the authority through their involvement in the registration of shipping companies. Agents and Contractors.

TECHNICAL SERVICES: This department is newly created and is saddled with the responsibility of safety and pollution management. It has to ensure the compliances of the International safety management code (**ISM Code**) which was adopted by the international maritime Organization (**IMO**) in 1993. In addition; the technical services department also handles the training of Seafarers. Commenting on the existing structure of NMA John

Egesi, the former Director-General said that there is nothing wrong with the organizational structure of departmentalization of **NMA**. The only problem he said is on the personalization- the people that occupy the positions. "If you are not a pilot," he whipped, "and you are asked to fly an aircraft. will the aircraft do well? The people will definitely have a bumpy ride. People keep talking about the structure of **NMA** as the problem. We did a lot of consultancy on this in the past and discovered that the structure is not the issue. The real problem is the people. **NMA** only has people problem and not structure."

STRATEGY

NMA has used several methodologies in the past. There was the issue of Cargo support by making sure that the indigenous carriers have access to highly prized project cargoes. Another method is through the issue of training development of indigenous skills and also the acquisitions of tonnages by virtue of section 13, which set up the office and the shipping fund. Not only that, there is also the issue of bi-lateral agreement with other countries and the relationship for the integration of the West African sub-region - Maritime -wise. That is why the maritime Organization for Central and West Africa (**MOFCAN**) was formed. Basically there are two major strategies stated in the decree establishing **NMA**. These are financial promotion and regulatory strategies, but John Egesi would like to recast regulatory strategy as interventionist strategy.

The regulatory or interventionist strategy is the Cargo-sharing - the **40:40:20** formula. It is interventionist in the sense that it takes upon itself the right to share Cargo. For example, if you want to ship cargo, you go and get a shipping company to do it for you. But **NMA** takes that right from you and says; you will ship it with whoever they give "this piece of paper" to. **NMA** developed various forms-**CI**, **CII**, **CIII** etc - to share different classes of cargo. The government cargo is classified as **CI**, Petroleum cargo which is a sub-government cargo is **CII** and the general cargo belonging too exporters on other people is classified as **CIII**. On paper **NMA** is supposed to control all bulk cargo, and government cargo is supposed to be carried by Nigerian

vessels. So, it was granted **40:40** for one type of cargo, **50:50** for another type of cargo and **100%** for government cargoes.

The international community resisted and fought against this arrangement. It was as a result of this that **NMA** devised various routes such as the far East route, the middle East route, the European route (that is the UK) etc. The financial promotion aspect states that government shall set up a fund - revolving fund. This is supposed to be given out in form of a loan - a revolving loan - for shipping companies to purchase or build vessels. The whole idea was that, if the indigenous shipping companies are to be empowered, they should be able to supply the vessels they will use in carrying the cargoes. On the other hand, if the shipping companies are only supplied with cargoes and they don't have the vessel, they will hire vessel maybe from foreigners. But then if you give them money to buy vessels and there is no cargo they might end up not being able to pay for the vessel. So, without the strategy meeting at the base it is useless. These were the strategies used in the past. The national maritime industry is very vast if you consider about 854 kilometers of ocean Nigeria has that stretches from our boundary from the republic of Benin down to the Bakassi, and also considering the population of this country of about 120 million. Looking at the resources both human and material and also being endowed with a lot of mineral resources, like gold and other petroleum products.

So, when these things are considered it is almost certain that NMA as an organ should be focused and there is a need, especially in this democratic dispensation, for a long-term development plan.

What is now practiced world-wide is cargo reservation as cargo allocation has been suspended. NMA can still use cargo reservation to develop indigenous capacity to ensure that indigenous carriers are still involved in the lifting of Nigerian sea-borne cargo. That is one aspect. The other aspect is the issue of Maritime Data Bank. There is no coordinated approach to information gathering and retrieval in the maritime sector at the moment. As part of the long term strategy NMA is working towards establishing a Learning and Research Center (i.e. Maritime Research & Learning Center) purely devoted to this type of information.

Also in the area of man power training and development NMA has taken serious

steps towards achieving capacity in this area through organizing seminars, workshops and other form of training locally and internationally. They are working out strategies through which Nigerian shipping companies could be fully involved in the lifting of crude and petroleum products The issue of safety and Maritime Search and Rescue pollution Control and Monitoring are in the force of their plans. As regards tonnage, they are developing a scheme whereby Nigerian shipping companies on their own could have access to these facilities without necessarily relying on government loan.

Shipping is international and therefore they should be able to go to any part of the world and obtain facilities from shipyards, from banks or financial institutions that specialize in lending of funds to shipping companies like them NMA has many strategies off their sleeve but the most important is the re-focusing of the Authority itself to ensure that only the best is good enough for the place-both in terms of manpower and also in terms of articulation of all the ideas that make Maritime Administration work effectively.

MAJOR IMPEDIMENTS

The major impediment to the effective performance of NMA are both political, managerial and resource base, according to Adejare Shobayo. But Vidon Jaule, the Director of Commercial Services (DOC) feels that the major impediment is mainly managerial since NMA generates their own funds.

In terms of political, that has drastically reduced with the coming of a new political dispensation Again with the Board of Director in place decisions are made with more consultation.

As per the managerial aspect, in the last 10 years they have embarked on massive training The people to do the jobs are right there and they have received additional training Really, what is required is just the motivation of these people to perform more effectively. But they don't rule out the possibility of training more qualified experienced hands from the outside. The Authority has invested a lot in human resource development.

According to Adejare Shobayo NMA is not in a position to finance all its operations "The Ship Acquisition alone by my own estimation, about \$2 billion should be injected into capacity building in this sector may be in the next 5 years," he stated. Nigeria is the only OPEC country that is not involved in the lifting of her own crude oil Therefore such investment has become necessary Then there is this issue of Cabotage which requires a lot of investment in that area. Cabotage is not only bringing in vessels and lifting coastal cargo alone A lot of capital is required to put all the infrastructures together.

NMA can only be a facilitating Agent. "NMA does not possess the resources to actually develop the Maritime sector in Nigeria. It must be the aggregate contribution of all the stake-holders - even including foreign investors," said Shobayo. Even with the 3% levy of every cargo, the resource base of NMA is still weak when compared with the responsibilities it is saddled with. For instance, the Maritime Safety issue requires heavy investment just like other developed countries have done There is this wrong notion that Maritime Safety is money spinning. It is not so because no one in his right senses can encourage people to come and dump waste In Nigeria so as to be fined. As it is now, all the aquatic life is gone and the water is polluted. Prevention, they say, is better than cure

COPING WITH GLOBAL TRENDS

Shipping is an international business and consequently location is not longer an issue Cargo Reservation is the global trend now Cargo Reservation (CR) means that people are no longer forced to use indigenous vessels to lift cargoes.

NMA has therefore adopted a kind of moral persuasion method in addition to conversing and marketing the indigenous carriers to participate in Nigeria - borne cargo. UNCTAD, which is an international document adopted is unfortunately no longer in vogue.

The in-thing or the global trend now is sager shipping in an ocean Any country that will put its blind eye to this surely will not be patronized by IMO members, which is the umbrella United Nation Organization in charge of Maritime

worldwide, so, it just nature that NMA is also now advocating that Nigeria's ocean are clear.

NMA is developing and evolving coherent information Technology System that could at least match what is obtainable in other parts o' the world They are now talking about AS, CUDA. the ECIS, the Electronic Enterprise Interchange etc.

SHIP ACQUISITION & SHIP BUILDING FUND

The Ship Acquisition and Ship Building Fund (SASBF) was a near disaster. It was actually established by section 13 of the National Shipping Policy Decree 10 of 1987. The main aim of the fund is to assist indigenous shipping companies in the development and expansion of the nation's fleet by granting soft loans for purchase of vessels, charter or effect repairs on their existing vessels. A total amount of \$7 78 million was disbursed as loans to nine shipping companies.

These are:

(1) CIBRA MARINE UNITED	- \$5M
(2) TARABARUZ FISHERIES LTD	- \$1 4M
(3) FAGETNIG.LTD	- \$1.25M
(4) SKOLAR SHIPPING LINE	- \$.55M
(5) GENESIS WORLDWIDE SHIPPING	- \$2.5M
(6) EAST WEST COAST MARINE SERVICES	- \$2M
(7) A & C ENGR MARINE SERVICES	- \$.225M
(8) BULKSHIP NIG LTD	- \$6M
(9) B.M. TANKERS	- \$5M

Initially what NMA wanted to do was to set up a Maritime Bank but the government did not give the licence at the time. There was a conference held and it was agreed that what was needed was a Maritime Bank. But instead the government established the Ship Acquisition and Ship Building Fund.

NMA management is thinking differently now after the initial attempt to establish a Maritime Bank was aborted. The new thinking now is that if the concept of the Maritime Bank is accepted, NMA will only facilitate its establishment, but it is not a bank to be owned by NMA or even called NMA

Bank. It has to be a consensus amongst stakeholders and other financial institutions. This kind of bank already exists in America and Europe. What NMA is now saying is that if a Maritime Bank is set up, the issue of lending ratio or whatever will not be applicable to such a Bank.

The bank will only focus on the maritime sector of the economy. Now, maritime business is capital intensive and as such, not many Banks can afford to finance a vessel of between \$10 - \$15 million when considered against the background of a very weak Naira. The only way such a bank could finance the maritime industry is when the bank can work out a kind of bank -to -bank arrangement with some other foreign banks including shipyards. Then that bank could attract a lot of loans for the maritime industry.

The issue of credit management is still a problem to NMA. Those shipping companies who benefited from the Ship Acquisition and Ship Building Fund are yet to pay up. They have all defaulted. Some were taken to court while a minority paid back or paltry sum to NMA. Whether these beneficiaries had intention of paying back these loans to NMA is another issue entirely.

STAKE HOLDERS & THEIR EXPECTATION

The major stakeholders of NMA are the shipping companies that they are trying to protect, but beyond that every ship owner worldwide coming to Nigeria is a stakeholder. It is the responsibility of NMA to protect their interest. Those are their primary concern even in terms of maritime safety. Maritime safety is for the users of the sea. It is for the users of Nigeria's economic 200 nautical miles from the shore lines. For Nigeria to have good safety records and attract ship owners to patronize our ports, there must be proper channeling of the waters, boards must be lighted and no dangerous piloting within the shores of the country.

Since NMA is an organ of the government it suffices, therefore, that government is also a stakeholder. Other stakeholders include NPA (Nigerian Ports Authority) is the Landlord of all the ports. Immigration Department and Customs services. The Nigerian Immigration Services is also part of the safety regulators. They ensure that only legal shipping operators crew members

actually that come on shore and all sorts of things that will be there. Then the Nigerian Custom Service, of course, releases the cargo

There are essentially two or three issues to maritime activities. First is the cargo. Second is the ship itself. These are very important. A country must have either or both of these before she is allowed to be a member of IMO. If the country does not possess the ship, it must possess the cargo. Nigeria does not have ship but she has the cargo. Apart from the foregoing, NMA is also responsible for the safety of life at sea and the passengers there in NMA's responsibility is far and wide.

The expectations of the stakeholders are two pronged. There is the Nigerian Shipping Companies Association promoting the interest of the Nigerian shipping, and the Shipping Trade Group that protects the interest of the foreign interest.

The Shipping Trade Group is a sub-committee of the Nigerian Chamber of Commerce and Industry. There is also the Association of Master Mariners. NMA meets with these groups regularly. At the parastatal level NMA has constant dialogue with NPA, the Nigerian Shippers Council and the customs. That's why there is the issue of ports reforms. They (NMA) have made immense contributions in this regard.

The Minister of State for transport, Isa Yuguda, opined that "in the 14 years of its existence, NMA has not met the expectations of government and particularly the stakeholders in this dynamic industry." Neither has NMA been able to achieve the desired result over the years in the area of enhancing the capacity and development of the maritime industry which are well grounded in the policy of NMA.

Some have argued that the monies given out to these shipping companies were not enough to even purchase one vessel. The question then is, why did they accept the monies in the first place knowing that they could not purchase any vessel with the money?' Is it part of the "national cake" syndrome? The SASBF is still on, but no new application is being received.

Back to the issue of Maritime Bank. Such a bank will still operate like any other bank. It will still accept deposits and also lend out money. The Ship Acquisition and Ship Building Fund (SASBF) is a fund established by the government. The

Authority could ask the Maritime Bank to play a role in the management of SASBF and could also ask other banks to do the same because Maritime Bank alone cannot meet all the requirements to develop the capacity in the maritime industry. The bank can facilitate and because of the name and because of the focus, it would handle maritime related issues better than some of other generalized banks.

HUMAN CAPITAL DEVELOPMENT WITHIN THE MARITIME INDUSTRY

NMA is not involved in the physical discharge of cargo, and they don't manufacture anything. What they render is services. Over the last ten (10) years NMA has virtually trained a lot of its workers. They also have a lot of ongoing exchange programs overseas. In 1996 alone about 367 staff attended various maritime related courses organized by reputable institutions and consultants within the country. Cadets were sponsored for various courses at the Maritime Academy of Nigeria, Oron, Akwa Ibom State. A training vessel "MV TRAINER" was acquired in May, 1998 for the training of the Cadets, and an indigenous shipping company, BRAWAL Nig. LTD, was appointed to manage the vessel. Staff were sponsored for various courses at certificate and graduate levels overseas to enable them perform their duties efficiently. For example, in 1996, 18 staff were sponsored to attend various long-term courses in different parts of the world to acquire modern knowledge / technology in the maritime industry. Some staff have been trained in India and at the world maritime University in Korea on an exchange program. Some others were also sponsored to do masters degree program in shipping.

Before the establishment or existence of NMA, Nigerians were rarely gunning for that kind of laurels. NMA believes that they are not training these people for the Authority perse, but rather for the entire maritime industry. This is because they will eventually leave to do different things for themselves. And as they do so, they will also be spreading the maritime gospel all over the place. In addition, NMA will soon establish a Research and Learning Center which will be carrying out all manner of research in the maritime industry. This idea was

non-existent ten years ago. NMA has really invested a lot in human capital development.

But how has all the training impacted upon the Authority on one hand and the maritime industry on the other hand? John Egesi commenting on this felt that NMA staff are "overtrained" going by the amount of trainings they have received.

It is like training for the sake of it. "Some departments go through repeated trainings The problem really is that there is no proper evaluation of the training needs of the Authority, and in the absence of this, the impact of the training cannot be measured. Cybernetics, for instance, is knowing where you want to go, then you will have to have the tools that will enable you get there It is only when NMA knows where it is going that it will train the staff as the tool that will enable them get there. Sometimes people are selected from different departments to attend the same type of training. At a point favoritism was applied in the nomination of the staff to attend training and in the selection of the consultant or the training school to handle the trainings," said John Egesi. But Adejare Shobayo, the Director of Research and Statics and Vidon Jaule, the Director of Commercials felt differently They both believe that people are trained as per the needs of the Authority and the maritime industry That the impact of all these trainings are being felt in both within the Authority and the industry.

They have already started reaping the dividend.

Some experts believe that there is dearth of qualified personnel in the maritime industry. Even the consultants in maritime issues are not qualified, and there are lots of square pegs in round holes. They concluded that NMA should be privatized to be able to maximize its potential rather than being the government's sick baby. Adejare Shobayo countered this saying that there are lots of qualified people in NMA The only issue is that these people are aging and there is an urgent need to encourage and train younger people who will eventually take over from them In the maritime industry the youngest of the experienced ones are in their 40s and above and that is not good for the industry. There is need to encourage young people to make a career in the industry and not for the sake of seeking employment.

RELATIONSHIP WITH GOVERNMENT

NMA was established by the Nigerian Government, and there is always this issue of hierarchy in every government establishment. The government department is the most structured everywhere in the world. So, the relationship between NMA and the government has been cordial just like any other parastatal within the government ambit.

They also look up to the government for support and draw their lifeline as well from the government. The short-term and long-term budgets of NMA are approved by the government. Basically NMA is a parastatal under the Federal Ministry of Transport that supervises NMA activities. They report to the Federal Ministry of Transport but the Ministry does not get involved in their affairs. There are guidelines that NMA follows. NMA operates strictly within the laws of the Federal government.

Change is the only one thing that is not permanent in life. Changes have affected NMA just like any other Federal or State parastatals or even private organizations, and they have been able to adjust. The long rule of military dictatorship terribly affected every fabric of the Nigerian nation and the psyche of her people. NMA was not spared either. As a result sometimes they might want to lose track, then they have to be called back.

In getting approval to do what they want to do, NMA has found the present democratic (civilian) dispensation more amenable. Under the military, things were done from hand to hand and there was this terrible fear of the unknown. Under the civilian regime, approval is gotten quicker. If an issue is presented and debated and it goes to the right quarters quick results will be gotten. Even if it is long, there is the assurance of quick solution.

ISSUE OF CORRUPTION

Ask any player in the maritime industry - be it a contractor, a journalist or other - they will be quick to tell you that the major problem of NMA is that they have too much money which has resulted in high level of corruption. In his opening

speech at the 3-day Maritime Capacity Building and Resource Development Seminar organized by NMA on April 2-4, 2001, the Minister for Transport, Ojo Maduekwe described NMA as a "corrupt and contract awarding body." Also in his closing speech at the same seminar the Minister of State for Transport, Isa Yuguda, remarked that "NMA is a policy making institution which has failed to perform from inception ."

He further stated that "NMA is a contract-driven institution in the past but should now be a policy making institution." NMA is not alone in this corruption issue. It has become a national malaise. It has an unfortunate history of corruption as informed by the happenings in the past When an organization is corrupt it will suffer as a result. It does affect the integrity not only of NMA as a corporate body but the people that work there.

So, when NMA staff is introduced, for example, to people on the street they begin to wonder how much money such staff has stacked away in the Swiss Bank Account. Corruption does affect performance in the sense that if the corruption issue is bordering on finances it then means that the money meant for project development will be diverted to the opposite direction.

CORPORATE GOVERNANCE

For 10 years NMA was without a Board of Directors. The current Board, made up of 11 (eleven) members, was constituted in January 2001. Corporate Governance according to Kenneth N Dayton is the process, structures and relationships through which the Board of Directors oversees what the executives do. This suffices that when an institution or organization has no Board of Directors it lacks vision, direction and no clear strategy. This was the state of NMA for 10 years. For that same period NMA was earning in circles without knowing what to do with both the financial and human capital resources.

Many feel that the new Board selection met the statutory requirement for the first time since inception. The decree establishing NMA stipulates that the Board of Directors must have a chairman and a representative each from the

Federal Ministry of Finance, Federal Ministry of Justice, Federal Ministry of Trade and a representative of the Nigerian Navy.

There had been frequent changes in the Board and leadership in the past which affected NMA performance. Vidon Jaule is of the opinion that if people should follow simple rules and guidelines put in place, there should be no difficulty or problem. But problem occurs when people don't abide and play by the rules and guidelines. NMA has suffered from the frequent change in leadership and this has affected their performance.

With the new Board in place, the staffs of NMA are very happy for it in that decision making is quicker now than before, and therefore, more confidence is reposed on the Authority by the staff. It is no longer a case of one man taking decisions concerning the issue of staff welfare or their future. Whatever cannot be approved by the Board goes to the Ministry and the Minister sends it to the Federal Executive Council. So, the structures are there and the limits of authorities are also there. That is one good thing about the government unlike the private sector.

Decision - making is top-down and down-up sometimes. Everybody is involved. Initiatives could come from down and move up. Sometimes also the top management articulates some strategies and pass it down and it comes up. If the people at the strata fail to support, that initiative will not get through. The major function of the Board, therefore, is good corporate governance.

CHALLENGES AND FUTURE ROLES

NMA has been saddled with the implementation of the nation's maritime policy since inception in 1987. The biggest challenge for NMA is how to cope with its challenging role. The main reason NMA has not been able or failed to take the industry to the expected height was that all along it has been going it all alone without really involving other stakeholders. Over the years NMA has been regarded as a wayward child, an institution without direction, a squandermania establishment and a good - for - nothing sick child, NMA has received all kinds of trashing from the government and other stakeholders. President Olusegun Obasanjo at a point wanted to scrap NMA because they could not justify their

continuous existence inspite of the huge investments government had made over the years. That's how bad and disappointed the stakeholders feel about the Authority.

NMA under the leadership of Ferdinand Agu (the Director-General) must take steps now to correct this "bad boy" image the Authority has been stigmatized with. They must wake up from their slumber and catch up with the changing times and with the world of globalization. Experts opined that NMA must brace up to its fast changing statutory responsibilities. Ferdinand Uwabueze Agu, countering some people's believe that NMA was seeking for relevance at a seminar said: "The issue is not whether we are NMA or NPA or NOA, that is not the issue because God has endowed Nigeria with a coast line of 854 kilometers.

Because God has endowed us with cargo, oil, agricultural produce and gas. Because God has endowed us with human resources. Because we have interest in shipping and because we have roles in shipping. Because goods move to and from our ports and harbor, the relevance of NMA is assured " NMA has to rebuild its foundation having been refocused and re-engineered by the Federal Government. To achieve this, they carry the stakeholders along this time.

The global environment under which the Authority was conceived and nurtured has significantly changed. The question then is, can NMA change with the changing times while changing unchanging principles that informed its formation.

Expert cite Singapore any time they want to make a case against the relevance of NMA. Singapore is the biggest hub center for shipping in the world and yet they don't have a separate national maritime authority. They only have Singapore Ports controlled by the government. But Ferdinand Agu believes that rather than seek for relevance, NMA management was interested in giving the Authority and the maritime industry a new foundation by involving those who should be involved in the process of the new foundation building. This is the new role of NMA.

According to Dr. Biola Fajemirokun, one other big challenge NMA has to deal with as it seeks to reposition itseff is the application of appropriate terms of trade to public sectors cargo in the wet bulk trades. This is a key test or

benchmark of the NMA's capacity to effectively implement the major policy objectives of Nigeria's national shipping policy. In view of the primacy of the petroleum sector in the national economy, Fajemirokun argued that crude oil exports should not be fixed on FOB terms but on CIF basis because the latter term achieves the following objective:

- Affords the seller control of distribution
- Adds value to the shipment through improved earnings/margins
- Restricts market information about the shipment and end users and in this way promotes national security
- Enhances the opportunities for indigenous carriers to participate in the sector and in this way conserve foreign exchange out-flows and improve the balance of payments in addition to strengthening national security and defence.

WAY FORWARD

Experts believe that for NMA to take Nigeria to the maritime promised land they have to have a revised NSPA a revised cargo reservation modality, deal with the issue of safety and pollution among others.

For Chris Asoluka, a maritime expert and consultant, a revised NSPA must ensure the inclusion of cabotage principle as a desideratum and the anchor-hold for a virile learning experience required for deep-sea shipping. This will result in:

- Improved domestic fleet capacity
- Human capacity building and generation of employment
- Enhanced earning capacity of the maritime sub-sector
- Development of Nigeria's maritime infrastructure
- Solid support to National Defence in times of emergency and
- Constitution to national security.

Commenting on cargo reservation, Christ Asoluka said that cargo reservation must be seen and used as a tool to jumpstart indigenous maritime industry under a protective shield. It is to structure and support an infant industry with capacity to grow and not a life - support instrument for an invalid. The success of cargo reservation principle depends on its ability to realize the purposes for which they never designed to achieve.

A new NMA must take the issue of strategic development of maritime industry as a critical assignment. A revised and realistic cargo reservation instrument should sufficiently assist the Authority in its monitoring and coordination role. Apart from assuming the role of a promoter and a regulator, it should provide the industry strategic direction so as to achieve a systematic growth. Like its US counterpart, the Maritime Administration (MARAD), NMA should:

- Establish regulations and procedures for government agencies to ensure that the cargo reservation laws have been implemented as intended by the National Assembly.
- Determine and prioritize programs, project and contracts which are encompassed by the cargo reservation laws.
- Monitor the compliance of government agencies and shippers subject to the cargo reservation laws.
- Report annually to the National Assembly on compliance with cargo reservation laws by government agencies

Christ Asoluka further opined that apart from NMA's international programs on safety and pollution control, like MARAD, it should lead Government efforts to achieve equitable access to foreign markets to Nigerian shipping companies, negotiating agreements or other understandings as appropriate. All this strengthens the maritime industry and the competitiveness of indigenous shipping companies. If by law a national carrier status is conferred on shipping companies where Nigerian individuals own at least 60 percent of the crew and at least 70 percent of the ship board officers including the captain and chief officer, and where possible the Chief Engineer are Nigerians then it follows that a positive effect on cargo reservation law on national fleet and maritime industry growth also has a positive correlation to capacity building in Nigeria.

Determined to face the enormous challenges of maritime capacity building and resource development in the 21st century and beyond, NMA organized an international seminar on the role of the Authority in the maritime industry and came up with the following 19 point communiqué.

Practice and Development of the Industry

1. The National Maritime Authority (NMA) should efficiently assert its role as the statutory regulatory agency of maritime practice in Nigeria:
2. NMA should enhance maritime capacity building through the establishment of a National Maritime Resource Development Center to undertake training, scientific maritime research and to act as a maritime data bank;
3. Government, NMA and all other stakeholders in the Nigerian maritime industry should brace up to the challenges of globalization and trade liberalization without compromising the best interests of the national economy;
4. NMA should introduce regulatory measures aimed at creating a dynamic environment for maritime practice;

Maritime Safety Administration and Marine Pollution

5. NMA should urgently address its new role of maritime safety administration and marine pollution control with a view to introducing constructive measures to ensure compliance with international conventions;
6. NMA should create equipped Marine Environment Unit charged with ensuring safer and cleaner marine environment;
7. The Federal Government should as a matter of urgency, domesticate and implement all IMO conventions to which it has acceded in order to enable NMA effectively regulate and ensure best international standards on

safety and control of marine pollution;

8. NMA should take advantage of International Oil Pollution Control Fund (IOPC) 1992, administered by the International Maritime Organization (IMO) (and to which Nigerian has recently acceded) for addressing damages suffered from oil spills and the provision of requisite infrastructure to forestall oil spills;
9. NMA's new maritime safety administration role should be given comprehensive legal backing in the proposed review of the National Shipping Policy Act;

Indigenous Participation in the Lifting of Crude Oil

10. NMA should, in keeping with its statutory function vigorously pursue to a logical conclusion, the issue of indigenous participation in the lifting of crude oil and petroleum products through collaborative efforts with Federal Ministry of Transport, NNPC, LNG, PLC and Nigerian Shipping Companies;
11. Nigerian shipping companies should acquire demonstrable capacity and ability to engage in crude oil transportation and ensure efficiency in the discharge of their commitments to the oil sector of the national economy in this respect;
12. NMA should make urgent recommendation to the Federal Government on the merits of revised terms on GIF (imports) and FOB (exports) principles;

Coastal Shipping / Cargo Reservation

13. In order to ensure modern development and growth of domestic waterborne transportation, generation of additional employment opportunities, national defense and security, safety and marine environment, generation of revenue and conservation of foreign exchange earnings, Federal Ministry of Transport / NMA should liaise with the Executive and National Legislative arms of government to urgently

legislate on the cabotage principles;

14. The suspended cargo allocation policy should be revisited and credibly restructured into a cargo reservation policy for enhancing indigenous shipping capacity building;

Ship Acquisition / Ship Building Fund

15. In a view of the laudable objectives of the Ship Acquisition and Ship Building Fund (the Fund) aimed at the development and expansion of a national fleet and acquisition of skills in maritime transport technology, credible options should be presented to the government in order to ensure that the suspension placed on it be lifted and the fund fully resuscitated;
16. The management of the funds should be such that financial institutions will participate thereby injecting discipline and competence in its administration;
17. Stakeholders in the shipping industry should demonstrate commitment to the success of the fund by structuring their operations to enjoy and liquidate facilities granted under the fund;
18. Financial institutions should acquire the necessary skills in ship financing and encourage long term investments in the lucrative maritime subsector so as to assist in the development and expansion of the nation's fleet;

Capital Markets

19. Shipping companies and other maritime operators should access and take advantage of the capital markets in order to enhance capacity building, ownership, visibility, discipline and transparency.

With the new Board in place to give vision and direction and with the empowered management team and motivated workforce, NMA has the potential to revitalize the maritime industry and achieve the purpose for which it was established.

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