



CABOTAGE REGIMES IN UNITED STATES OF AMERICA AND CHINA: LESSONS FOR NIGERIA

By

Fabian C. Ikeh, Esq.

Abstract

Coastal navigation or Cabotage is the principle that regulates maritime activities that takes place within the waters of a country and recognizes that a country has the right to restrict the activities of foreign vessels that operate in its waters. Restrictions may be strict in some countries, but may be waived or relaxed in others. This all depends on the purpose that a country intends to achieve in its maritime domain. Therefore every country desires to be in control of shipping within its territory through various legal interventions to ensure the realization of the enormous benefits of the sector. The essence of this article is to assess the major extant law affecting this sector in Nigeria with that of two other jurisdictions of United States and China, which local shipping are doing very well and yielding enormous economic benefits for those countries. However, in Nigeria, the main extant law in this sector appears not to be in tandem with those of the United States and China, which appear to be of international standards. Consequently, it is recommended that the Coastal and Inland Shipping Act i.e. the Cabotage Act of Nigeria should be amended in line with the best global practices.

1.0 Introduction

According to the Black's Law Dictionary,¹ coastal navigation, that is, cabotage is the practice of trade along the coast of a country; the transport of goods and passengers from one port or place to the other in the same country. It is the privilege of transporting traffic between two ports of the same country. The privilege of conducting this trade is generally restricted to ships flying the flag of that country. This term has also been adopted to describe commercial air transportation between two airports located in the same country.² Cabotage is a nautical term from the Spanish word, which strictly refers to moving from cape to cape along the coast without going out into the open sea. In international law, cabotage navigation is identified with cabotage trade, meaning navigation and trade along the coast of a country between its ports.

However, cabotage or coastal shipping has come to be known as "coastal trade", "coasting trade" or "coastwise shipping" in the sense of the transport of goods and people by ship between ports along the same coast or between ports within the same country and the country's exclusive rights to operate maritime traffic or rail traffic,³ within its domain. According to Igbokwe,⁴ in international law, cabotage or coastal shipping relates to coasting, navigating, and travelling along the coast between ports or from

* LLM is a Lecturer in the Department of Business Law, Faculty of Law, Rivers State University, Port Harcourt, Nigeria. He can be reached at fabik_co@yahoo.com and Phone No. 08023149351.

¹ B.A. Garner, *Blacks Dictionary of Law* 11th edn, (Thomson Reuters, 2019) 230.

² R.C Lane, Cabotage, *The Encyclopedia of Public International Law* (1992) 519-520.

³ H.C.D Hukum, Cabotage <<https://cekhukum.com-cabotage> > accessed 12 October 2022.

⁴ M. Igbokwe, "International Maritime Conventions: Regional Cabotage for West Africa: A Possibility?" a seminar paper presented in partial fulfillment of the requirements for the Award of LLM of 2001.



port to port. Likewise, it has been pointed out that cabotage has a similar connection in the French "caboteur" which means to sail along a coast" or "to sail coastwise or by the capes".⁵

When cabotage navigation is limited to the coasts of a certain country, it is called national or local navigation, but when it is regional or sub-regional, it is called short-distance navigation; both national and regional coastal navigation are part of nautical navigation. National coastal navigation is generally regulated by law that allows navigation and commerce within a country's coasts or from port to port within a country to be reserved exclusively for the national flagships and citizens. Consequently, coastal navigation has been defined as a principle that refers to the practice of maritime nations retaining the privilege or right of navigation and commerce along the coast between two ports within the national territory, only for the ships duly registered in that country, which is usually provided for by law.⁶

Oppenheim *et al.*,⁷ in their classic work stated that the term coastal shipping or coastal commerce as used in commercial agreements now includes maritime commerce between any two ports of the same country, whether on the same coast or on different coasts, provided however that the different coasts are all coasts of the same country as a unit politically and geographically, unlike the coasts of the colonial dependencies of this country. Suffian *et al.*,⁸ stated that coastal shipping refers to a country's reservation of traffic to itself (coastal waters) within its territory. These authors argue that the coastal shipping policy is a trade barrier that limits foreign competition aimed at pursuing the growth of national interest in the domestic infant industry. According to Igbokwe,⁹ the Maritime Cabotage Law is a law that allows navigation and trade within the coast of a country or from port to port within the country (domestic freight) to be reserved and carried exclusively by national flag vessels and citizens. It has also been asserted that navigation and trade extend to inland waters. Coastal navigation law may be contained in a single piece of legislation or a combination of two or more navigation pieces of a country.

For Ndikom and Buhari,¹⁰ cabotage is a legislative tool that restricts or reserves access to maritime or air trade within the territorial jurisdiction of a country on national capacities. Restrictions on coastal navigation of local and national capacity prevent foreign-flagged vessels from accessing the national maritime market, thus trapping all internal trade for vessels flying national flags and stifling foreign competition. Cabotage is a nautical term derived from Spanish that literally means "to navigate from cape to cape along the coast or in high waters without going out into the open sea."¹¹

⁵ K. Magee, "US Cabotage Laws: Protective or Damaging? A Strategy to Improve Cruise Vessel Competitiveness and Traffic to US Ports" MA projects, Monterey Institute of International Studies, 2002.

⁶ E.M. Lorenzo, "The Domestic Shipping Industry of the Philippines: A Situation Report" in *MARINA Paper*, 2002.

⁷ L. Oppenheim *et al.*, *International Law: A Treatise*, vol. 1 (The Lawbook Exchange Ltd. 1920) 336.

⁸ F. Suffian *et al.*, Policy Fiasco: The Sabotage of Cabotage Policy Malaysia, vol. 3, Iss. 6, *International Journal of Social Science and Humanity*, 2013, 514-516.

⁹ M. Igbokwe, *Nigerian Maritime Cabotage Policy and Law: The Case and Advocacy*, (One United Thursday Company Ltd. 2006) 68-69.

¹⁰ O.B.C. Ndikom & O.S. Buhari, A Critical Appraisal of Nigerian Cabotage Policy, Regulatory Framework, Employment Prospects and Way Forward, vol. 4 Iss. 11, *International Journal of Research in Computer Application and Management*, 2014, 74-78.

¹¹ H. Zhang, "Maritime Negotiations in the World Trade Organization: An Analysis of the Doha Round" M.Sc Thesis in Maritime Economics and Logistics, Erasmus University Rotterdam, 2005; and M. Stopford, *Maritime Economics* (Abingdon Routledge, 1997) 55-62.

The economic purpose of the restrictions on coastal shipping is to encourage the establishment and development of a national merchant marine. However, it has been argued that while cabotage may be aimed at facilitating the local shipping industry, the policy seems outdated as it does not really serve the purpose of making the shipping industry more competitive, but instead harms local growth and distorts competition in the national shipping industry.

2.0 Coastal and Inland Shipping Act 2003

In Nigeria, the Coastal and Inland Shipping Act or Cabotage Act of 2003 regulates shipping activities within the country. The law was established to restrict the use of foreign ships in the local coastal trade; promote the development of local tonnage; creation of a fund to finance coastal vessels; and for related matters.

Section 2 of the Cabotage Act defines cabotage as follows:

- (a) The carriage of goods by vessel, or any other mode of transport, from one place in Nigeria or above Nigeria waters to any other place in Nigeria or above Nigeria 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 lake or river to the same place, or to any other place in Nigeria, either directly or 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 vessel, in any other marine transportation activity of a commercial nature in Nigerian waters and, the carriage of any goods or substances whether or not of commercial value within the waters of Nigeria;

Accordingly, the Cabotage Act was instituted to reserve the commercial transportation of goods and services within Nigeria's inland coastal waters to vessels flying the Nigerian flag and owned by persons of Nigerian nationality. Once again, it was created to ensure that local shipping companies are protected from any form of disability that may arise from the dominance of foreign ships in transporting goods within Nigerian waters.

Therefore, the Cabotage Act seeks to restrict domestic coastal trade of foreign vessels in order to reserve coastal trade for Nigerian nationals only. It also provides that a vessel not wholly owned or operated by Nigerian nationals, built and registered in Nigeria, shall be engaged in the domestic coastal



transportation of goods and passengers within coastal, territorial or inland waters, or at any point within the exclusive economic zone waters of the Nigerian area.¹²

This does not entirely exclude the participation of foreign owned vessels in the Nigerian cabotage trade. However, to allow a foreign-owned vessel to engage in coastal trade, a person domiciled in Nigeria and acting on behalf of a foreign-owned vessel must submit a license application to the Minister of Transport. The license is issued based on the fulfillment of certain conditions specified for the applicant as stipulated in the law.¹³

Therefore, the main purpose of the Act is to promote ownership of Nigerian vessels and limit the use of foreign vessels in Nigerian maritime trade within the country. It also aims to strengthen the country's economy through indigenous ownership of ships and involve Nigerian ship owners in the business of freight transportation and other services in the field of Nigeria's inland waterways. Therefore, the Act allows Nigerians involved in maritime activities to invest heavily in local coastal trade by acquiring or owning ships and conducting coastal trade with them. However, it also allows Nigerians to manage ships in partnership with foreign partners in order to gain skills in the business. This should be on a limited scale to allow for local content via fully indigenous businessmen participating in this area of the country's economy.

Thus, it has been pointed out that the laws prohibit foreign vessels from operating in the country's territorial waters, except in compliance with the Cabotage Act. The Nigerian Maritime and Safety Agency, the agency responsible to implement this Act, wants to increase the number of Nigerians involved in the maritime side of the country's business and is working closely with the Nigerian Content Development and Control Board (NCDMB) to obtain a joint classification of vessels operating under the Cabotage Act in order to ensure full application of the Act.¹⁴

Despite the Cabotage Act's commendable provisions on indigenous ownership of ships and their full responsibility for coastal trade within Nigerian territorial waters, much is still missing from the system. Since the enactment of the Coastal Shipping Act in 2003, commercial operations for the transportation of goods, services and passengers in Nigeria's inland and coastal waters continue to be dominated by foreign-owned vessels and foreign crews. Few indigenous marine vessels are involved in the coastal trade with very little cargo production. Domestic shipping companies do not own any commercial deepwater vessels and few are involved in the operation of charter vessels and most of them are foreign owned vessels. Few indigenous vessels are registered with the industry and also very few indigenous crew. Again, a close examination of the Nigerian flagged ships will show that most of these ships are actually owned by some foreigners. From the above, Nigeria's maritime sector,¹⁵ including the coastal shipping sub-sector, is undoubtedly dominated by foreign-owned and foreign vessels.

¹² S.3 Cabotage Act, 2004.

¹³ *Ibid*, s.15.

¹⁴ V. Obia, Cabotage Act: NIMASA's Bold New Steps to Protect Indigenous Operators <<https://www.thisdaylive.com-cabotage> > accessed 14 October 2022.

¹⁵ L. Okorji, and W.I. Ukpere, "A Strategic Reposition of the Maritime Industry for Economic Recovery and Sustainability: The Cabotage Act" *African Journal of Business Management* Vol. 5 No.14 (2011) 5658-5663.



The above situation arose because Nigeria does not have sufficient domestic capacity in the aspects of coastal navigation property and infrastructure covered by the Act. Not only in the above Nigeria lacks the capacity, but also the manpower and the ability to make the most of this sector¹⁶. Consequently, the law maintains a liberal coastal navigation policy through the use of an internationally recognized waiver system. The waiver is based on any of the following principles of Unavailability, Reciprocity and Bilateral Agreement.

Different nations adopt any of the above exemption principles depending on their respective relationships to any country of origin or flag of a ship, and some exemptions are granted on highly unfavorable terms in an effort to protect ships flying the indigenous flag. However, the Nigerian Cabotage Act operates a waiver system based on unavailability.¹⁷ The conditions for the granting of waivers are expressly established to prevent the waivers from being used to subvert the noble purposes of the law. For waivers to be granted and depending on the application the Minister of Transport must be satisfied that the requirement for the waiver is that the vessel is not available locally. The Act also requires the Minister to follow the prescribed order of waiver, i.e. a joint venture between Nigerians and non-Nigerians, must be given first priority in establishing the proper conditions for the waiver. When this is not available, a 100% foreign owned vessel is licensed to provide the required service. This is to ensure that the nation does not simply lose the benefits of any contracts because there is no national ship to do the service.

However, some pitfalls, flaws and weaknesses of the cabotage system in Nigeria have been pointed out. For example, it has been said¹⁸ that the conditions set for an exemption or license to foreign companies are so straightforward that more foreign vessels are likely to be granted licenses and waivers to engage in coastal shipping in Nigeria. This is due to the fact that there is currently not a sufficient Nigerian fleet to meet the needs of Nigerian shipping. Thus, with the inclusion of the waiver, most of the responsibilities of the native ship owners were transferred to the foreigners, making the Cabotage Act ineffective and at the same time incompatible with the purposes of the law or the object of the law *ab initio*. The Nigerian ships that would be used to transport these cargoes must suffer at the expense of these foreign ships, which has resulted in foreign dominance of the country's maritime industry.

In any case, long-term chartered foreign-flagged vessels to Nigerians are allowed to participate in the country's cabotage trade. This is unavoidable as there are very few local ships plying the Nigerian coast, so most of the ships used for shipping are chartered, without which inshore shipping trade would not easily take place in the country. In order for this to be possible within the jurisdiction and to attend to the privacy of the vessels that operate in the oil sector and their continuous movement, the law allows dual registration by allowing the temporary registration of these vessels in the country.¹⁹ The practical implication of these provisions is that foreign shipping companies are guaranteed at least a minimal continuing participation in the country's coastal trade when the stipulated conditions are met. The term minimum period now seems to translate to the long term, as issues of indigenous ownership of local

¹⁶ Ss. 3-6 of the Cabotage Act of 2004

¹⁷ Part 111 of the Maritime Act 2003

¹⁸ C.A Iroegbu, "Weaknesses of the Ongoing Reforms in the Maritime Industry", *The Fronteria Post*, May 27, 2010.

¹⁹ S.28.



ships and crews are not encouraged by the government's deliberate policy of upgrading their skills and capabilities.

The fact that the issue of chartered foreign vessels may be compromised, comprehensive and practical enforcement provisions are laid down in the law²⁰ to achieve its laudable objectives. The law contains provisions to limit, if not completely eliminate, disruptive practices by stakeholders, but the problem is implementation. Therefore, ownership standards are already very strict and any violation of those provisions is penalized by law.²¹ Consequently, it would be very difficult to have reasonable and respectable citizens lending their names as a front to foreign ship owners. Once again, the law establishes that the operation of coastal navigation will have little or no cost to the public, since the beneficiaries will contribute to the successful operation of the coastal navigation system.²² This is a commendable provision provided that the beneficiaries have acquired sufficient capacity to pay the bills for the proper functioning of this provision. This is possible for foreign ship owners, but for indigenous ship owners, compliance with the above provision may not be possible in view of the many problems they face in the industry.²³

3.0 Merchant Marine Act of 1920 (Jones Act)

The United States of America operates two forms of coastal navigation systems, the national and international systems. In terms of local coastal shipping, economies generally reserve domestic freight for ships flying their own flag, but the requirements to provide this local coastal shipping service are more stringent in the US. Under the Jones Act,²⁴ ships must be registered under the US flag and also be owned by a US corporation, which has a maximum of twenty-five percent foreign ownership and at least seventy-five percent of its employees must be US citizens.

More importantly, under the Jones Act, coastal shipping is reserved for ships built in the United States. This construction requirement has the effect of subsidizing US shipyards. The United States defines coastal shipping as maritime transportation services between two points in the United States, including its lands and possessions, either directly or through a foreign port. Under US Coastal Navigation regulations, any domestic portion of an international voyage is also considered a coastal voyage. This is an important and more comprehensive limitation than that used by some other economies such as Nigeria, even if waivers are issued in practice in the case of Nigeria.

These limitations stemmed in part from the long decline in the size of the US marine industry before World War I. In 1913, the US fleet was very small compared to the US share of international trade. From the start of World War I, foreign-flagged ships were diverted from American routes. To meet the demand for commercial and military shipping, the US government subsidized the shipbuilding industry. As a result, the shipbuilding industry received not only significant financial resources, but also experience in interacting with policymaking, increasing its ability to influence the content of the Jones Act. However, there are certain exceptions to the Jones Act. For example, there are no construction

²⁰ *Ibid.* Part VI.

²¹ *Ibid.* s.23.

²² *Ibid.* ss. 43-44.

²³ Cap 4.

²⁴ S. 27, US Merchant Marine Act 1920.



requirements for the transportation of crude oil from Alaska. In addition, except for activities designated for the United States Government, the United States territories of American Samoa, the Virgin Islands, and the Northern Mariana Islands were also exempt.²⁵

For international coastal shipping in the United States, there are no barriers to market entry for local service providers in the shipping industry. However, there are significant barriers to entry for Foreign Service providers. In cross-border trade, the United States maintains certain shipping preferences, also called shipping reservations. Under the World Trade Organization's General Agreement on Trade in Services (GATS), shipping preferences are a restriction on market access in Mode 1. The GATS divides the supply of services into four modes. Mode 1 is cross-border supply and applies when service providers residing in one economy provide services in another economy, without either the supplier or the buyer/consumer moving to each other's physical location. Subject to this restriction, some types of cargo, for example government-built, strategic, or military, or funded by certain government programs, may only be carried by ships flying the economy flag. At the same time, the requirements to fly the American flag are quite restrictive. To fly the flag, the vessel must be owned by a US entity, the vessel must be owned by US citizens or legal permanent residents, all licensed officers must be US citizens, and the vessel must be US Coast Guard approved. Foreign seafarers can work on US-flagged ships in domestic and international trade if they have a green card, but are restricted to only twenty-five percent of their authorized crew.²⁶

Cargo reservation is a precedent that has been widely applied in the past in the transnational shipping industry. However, although most economies have abolished this type of restriction, the United States is one of the Organization of Economic Developing Countries (OECD) economies that still apply this type of restriction. In addition, preference cargo laws in the United States cover many types of shipments. Additionally, given the limitations on cross-border trade, the United States is party to a bilateral maritime agreement with Brazil. This contract includes the clause to share the goods. In other words, it establishes a system of "reservation of goods" between partners based on participation in bilateral or multilateral relations in international trade carried out by sea. The agreement signed with Brazil stipulates that carriers flying the national flag of each party will have equal and non-discriminatory access to cargo controlled by the government of the other party. However, according to the Brazilian Maritime Transport Agency, the reservation does not apply.²⁷

There was a long discussion about whether the Jones Act, the main US maritime law, was redundant and should be repealed, or whether certain restrictions, such as citizen ownership and control requirements, should at least be rescinded, but the government took no action thereafter. This inaction was because many argued that repealing the Jones Act would jeopardize American jobs, American security, and America's maritime character and this led to an argument for further extension of coastal shipping laws to the outer continental shelf. Despite the above, fortunately,²⁸ a new bill was introduced in early November 2021 that, among other measures, sought to amend the Jones Act, to provide

²⁵ F. Bertho, US Shipping <<https://fabien.bertho@sciences-po.org>> accessed 3 January 2023.

²⁶ *Ibid.*

²⁷ (n2).

²⁸ M. Lee and M. Fischbach, Jones Law <<https://www.lee.senate.gov/services/files>> accessed 4 January 2023.



temporary exemptions for ships carrying goods from a US port to another to relieve congestion or backlogs or delays in a port. Unfortunately, even such a modest solution could not pass Congress and the White House because of the special interests of pro-Jones Act.²⁹

Nigeria's cabotage system is similar to the United States of America (USA) domestic cabotage scheme in some respects, but does not have the strict restrictions similar to those of the USA. Even where the restrictions of Nigerian law apply, they have generously been waived due to the lack of local capacity in the country to implement the coastal navigation system.

4.0 Maritime Law 1993

China was also a country with a strict maritime policy. For example, Article 4 of China's 1993 Maritime Law clearly states that shipping and towing between ports in China must be operated by ships flying the Chinese flag. To fly the Chinese flag, the owner must be a Chinese citizen or company. In the case of business owners, the percentage of share capital contributed by Chinese investors must not be less than fifty percent. In the event that a foreign carrier carries out marine transportation business without approval, the department in charge of managing water transportation will order it to stop the operation and will impose a fine of not less than one time nor more than five times the illicit profits.³⁰ Due to the restrictions of China's coastal navigation law, coastal transportation services on ships flying foreign flags were strictly prohibited, not only for transportation in domestic trade between two domestic points, such as transportation of domestic commercial goods from Shanghai port to Tianjin port, but also in the form of providing the local transportation industry for international trade. For example, if the goods exported from Tianjin to Shanghai are shipped first before being shipped abroad, the domestic part of the transportation from Tianjin to Shanghai is also considered coastal transportation, and foreign-flagged ships were prohibited.

However, on November 9, 2021, the State Council announced the decision to suspend the implementation of the above-mentioned relevant regulations in the Lingang New Area of the China (Shanghai) Pilot Free Trade Zone (hereinafter referred to as the Lingang New Area) as a test. This is achieved by allowing qualified foreign liner companies (as well as those based in Hong Kong and Macao) to use their foreign-flagged vessels to carry out shoreline connection work between Dalian, Tianjin, Qingdao and Shanghai Yangshan ports for foreign trade containers, using the Yangshan port area as the international transshipment port.³¹ The so-called new coastal interconnection policy allows foreign liner companies to carry out coastal business, that is, the internal part of international commercial cargo transportation by foreign-flagged vessels. This means that, when the conditions set out in the policy are met, foreign-flagged vessels deployed on international voyages and owned or controlled by foreign companies may carry direct export containerized goods and transit containerized goods at the same time between Chinese coastal ports. Therefore, in the above prohibited example, foreign container liner companies can now use foreign-flagged ships to transport international trade

²⁹ US Congress House Committee, Jones Act <<https://transportation.house.gov/news/press-release>> & <<https://reason.com/2021/01/27-represents>> accessed 4 January 2023.

³⁰ X. Cao and Y.C. Zhang, Opening up Cabotage: China's Trials and Challenges <<https://doi.org/10.1016/j.marpol.2022.105174>> accessed 4 January 2023.

³¹ *Ibid.*



goods first from Tianjin to Shanghai (Yangshan Port), and then transport international trade goods to foreign ports from the Port of Yangshan.³²

The new ground freight policy was introduced on a trial basis and indicates that China has become one of the few major shipping countries that are taking steps to open up the domestic shipping market. Although restricted in very limited application, the new policy is supposed to help increase port productivity and benefit foreign container liners, but it may threaten the interests of the domestic shipping industry.³³ There will be challenges in the mutual implementation of the policy, since China has not reached any agreement on the opening of the maritime space in any existing bilateral or multilateral agreement. The future of the policy depends on its influence in driving forward the domestic shipping management reform and its impact on the domestic shipping market.

It should also be noted that there have been some practices to relax the application of coastal navigation law, for example, how the EU extended the principle of freedom to provide services under the Maritime Act to all EU member states and how Australia's reform allowed foreign access to domestic shipping through a single system of permits and licenses. However, these practices are exceptions to the coastal navigation law and are limited in their application because most countries still prefer not to impair the coastal navigation law due to local considerations despite the potential benefits of relaxation of the coastal navigation law.³⁴

5.0 Comparative Analysis

In other jurisdictions like the United States and China their shipping, especially in the field of cabotage has developed commendably as their economies have been positively affected. These developments are the result of deliberate government maritime policies and their implementation or enforcement. In the United States, for example, to ensure strict compliance with its coastal shipping policy as set out in the Jones Act, the government had to make sure it had enough ships to make its domestic coastal voyages. They did this by subsidizing local shipbuilders to locally produce enough ships for this transport. The government deliberately gave large financial support to shipbuilders on very liberal terms, allowing them to produce much-needed ships for the country to comply with its local coastal shipping legislation.

The above situation is very different from Nigeria, where the government has not provided such financial support to the shipping industry. Even the money generated under the Coastal Vessel Finance Fund through local shipping contracts that ship owners have undertaken since the inception of the Coastal and Inland Shipping Act in 2003 has not been used to help the shipping industry. The CVFF that is worth several millions of dollars and billions of naira has yet to be disbursed to shipping companies or ship owners to upgrade or enhance their fleet capacities and capabilities as required by the Cabotage Act to perform the coastal navigation services. This is a very big disincentive for the shipping sector of this nation since there are not enough ships in the country to carry out coastal navigation services locally. As a result, foreign ships are relied on to make the coastal havens in this

³² M. Lee, Cabotage Rules Relaxed for boxes shipped from Shanghai to domestic ports <<https://theloadstar.com-cabotage-rules>> accessed 4 January 2023.

³³ (n7).

³⁴ *Ibid.*



country, which is sadly also in short supply as many foreign shipping companies have gone to Europe, where there is currently much business stemming from the Russian-Ukrainian war.

In the case of China, realizing how difficult it is for the central government to manage the country's ports, the central government decided to loosen its grip on port management and hand it over to provincial and municipal governments to handle port management, focusing on policy formulation and compliance enforcement. Even provincial and municipal governments tend to privatize ports to generate more revenue of which the central government owns a larger share. Therefore, the Chinese maritime sector is thriving and shipping companies are well positioned to continue their cabotage policy.

The above is not the case in Nigeria. Here, the Federal Government of Nigeria has continued to hold to and been in total control and management of the maritime transport sector. It has not allowed the States and Local Governments to be involved in any way at all. It has done this through the establishment of several agencies responsible for various aspects of the maritime domain, which responsibilities are generally similar to each other. This is unnecessary as they have led to inter-agency rivalry and lack of interoperability, particularly in port operations. Besides, the Federal Government has not taken the initiative to reform the extant laws applicable in the maritime sector and the respective agencies to bring them in tandem with international standard and best practices. Even the modest improvements made in the area of Customs operations through the Single Window Portal and the new Customs and Excise Management Act, 2023, have not been fully implemented. In consequence of the above, the enormous benefits accruable from maritime transportation of the country have not been realized unlike in the United States and China.

6.0 Lessons for Nigeria

From the above, many lessons can be learned from the shipping activities and operations of the United States and China. These lessons include:

1. Under the Cabotage System, whether a country adopts restrictive or relaxed method, the enormous benefits from the sector could still be realized, provided the necessary standards and laws are put in place and compliance with them enforced.
2. Therefore, any of these systems could be adopted based on the country's ability to carry out its maritime transport effectively and efficiently to achieve its purpose in the sector.
3. To adopt a restraint regime, a country must have a strong maritime or shipping policy, adequate maritime infrastructure, sufficient and available locally built vessels, qualified and competent local crew, and a thriving and vibrant shipping business.
4. To achieve the above, the Government will support and provide adequate financial support to shipbuilding companies and the maritime industry as a whole as in the United States of America. This support would encourage shipbuilders in the country to build enough ships to properly operate the restrictive coastal shipping policy, without any support from foreign ships.
5. Restrictions create business opportunities and increased market share for local companies within the country. Lead the local shipbuilding industry in developing and protecting member companies of the State Ship owners Association. The restrictions can be used in certain shipping areas such as oil and



- gas like in Indonesia and are limited in terms or renewable in short periods. It leads to the growth of national or local expertise in shipbuilding.
6. There is a movement towards decentralization of port ownership by moving it away from the central or federal government control and handing it over to local, municipal and state governments or to both national and foreign corporations, corporatizing port operations. However, policy making and strategic planning for ports is still left to the central government.
 7. The ownership of the ports is now being changed from the government to the private sector or privatization. Port authorities are also moving towards more independent private management, as some port authorities are now public limited companies or limited liability companies under common law.
 8. There are fewer regulatory agencies in marine regulation and management in these countries than in Nigeria. In the United States there are only the Federal Maritime Commission and the Maritime Administration, while in China, it is only General Administration of Customs of China. Therefore, the tasks of many agencies are organized and given to one or two agencies in these countries to perform, thus eliminating unnecessary duplication of duties as in this Nation.

7.0 Conclusion

Shipping is a very vital aspect of any country's economy. When properly harnessed, it will stimulate a country's economy and increase its GDP from different aspects or parts of that industry. This is because shipping is a system that involves many independent domains that generate economic activities within each domain. Each of these independent areas is its own industry and can sustain and operate on its own to generate its own economic activities and benefits for a country's economy without affecting the other areas.

However, the above can only be achieved through adequate, effective and efficient management of the maritime sector. To achieve the above, there must be a clear strategy within the shipping company system and the system of a maritime state, based on functional management and the logistics concept to give the best results in terms of efficiency and safety of its services. In other words, quality and safety are basic requirements for users of maritime transport to achieve the needed economic benefits.

Therefore, the method of organization, management, operational structure and activities within the shipping system, should have the ultimate objectives that should impact on the quality of maritime transport services for the realization of the benefits from this sector of the economy. A stable and well-organized shipping system must set a clear vision and economic goals, and must be effectively and efficiently administered and managed in accordance with international standards for the enormous benefits accruable from the sector to be harnessed.

8.0 Recommendations

1. The government should take more proactive steps to encourage the shipbuilding industry to build enough ships locally to meet the requirements of the country's coastal shipping activities instead of relying on foreign ships, which have now decreased significantly due to the fact that many of them have recently left the country due to the presence of many businesses abroad due to the war between Russia and Ukraine.



2. The government should immediately commence the disbursement of the Coastal Vessels Finance Funds worth millions of dollars and billions of naira respectively which have been generated over the years from intra-country ship transport contracts, which huge sums have not been disbursed since the commencement of the Cabotage Act in 2003. The disbursement of the said funds should be made mandatory yearly and its utility strictly enforced.
3. The government must take the necessary steps to align its maritime industry with global best practices, as in the cases of the United States and China by adopting any of their above models instead of applying the waiver system.
4. The government should decentralize port ownership by reducing total federal government control over ports and involving the local and state governments in the ownership of some ports in the country. However, policy making and strategic planning for ports should be left to the federal government.
5. Port authorities are now moving towards more independent private management, as some port authorities are now public limited companies or limited liability companies under common law. Therefore, the management of the ports should change from the government to the private sector or privatization or to private public partnership.

Consequently, where the above recommendations are implemented, the Nigerian Cabotage regime and indeed the maritime transportation industry of the country would be better than it is presently.