The world is often been referred to as “a global village’. Countries are interdependent on each other in the area of trade and commerce. More than 80 percent of global trade measured in volume is carried by sea to ports worldwide. Shipping or maritime transport is an economic enabler and fosters trade competitiveness even in landlocked countries that do not have the advantage of coastal states. Seaborne trade reached over 9 billion tons in 2013 a record high due to the opening up of markets in China and increased trade with Asian countries.

As maritime transportation has increased many countries have seen the need to safeguard their economies by enforcing strict cabotage regimes to build local or indigenous capacity in shipping and derive revenues from inland and coastal shipping transportation. Cabotage traditionally refers to shipping along coastal routes, port to port. Cabotage policies are intended to protect the domestic shipping industry from foreign competition, preserve domestically owned shipping infrastructure for national security purposes, and ensure safety in congested territorial waters.

The Coastal and Inland Shipping (Cabotage) Act was passed in 2003 and its objective was to reserve commercial transportation of goods and services within Nigerian coastal and inland waters to vessels registered in Nigeria and owned by Nigerians. The Act primarily sought to encourage indigenous ship ownership and restrict foreign vessels from trading in Nigeria’s inland waters. Alas, twelve years after the Cabotage Act we have seen a decline in shipping activities by our indigenous shipowners who have been excluded from the lucrative oil sector for lack of sea-worthy vessels. Most of our shipowners have been impoverished and frustrated by the lack of commitment by government to heed their call for reforms in the cabotage regime.

The Nigerian Maritime Administration and Safety Agency Act, 2007 established the Nigerian Maritime Administration and Safety Agency (NIMASA) to promote and develop indigenous commercial shipping in international and coastal trade and regulate and promote maritime safety, security, marine pollution and maritime labour. At the commencement of the Act, all assets, liabilities, rights and obligations of the Nigerian Maritime Authority (NMA) and the Joint Maritime Labour Industrial Council (JOMALIC) were transferred to NIMASA. It is under NIMASA that Cabotage is to be enforced.

A keen look at the Cabotage Act highlights salient provisions for the growth of a vibrant shipping sector. Carriage of petroleum products between oilrigs, platforms and installations whether off shore or on shore or within any ports or points in Nigerian waters has been restricted to Nigerian citizens. In fact, the Act is far reaching and must have caused some
excitement by those who promoted its enactment. In the United States of America, the Merchant Marine Act, 1920 also known as the Jones Act did a lot to restrict the operation of foreign vessels in American coastal waters. By Section 27 of the Jones Act all goods transported by water between U.S. ports are to be carried on U.S. flag ships, constructed in the United States, owned by U.S. citizens, and crewed by U.S. citizens and U.S. permanent residents. Although the Jones Act has been amended on several occasions, it still provides for a strict cabotage regime worthy of emulation.

The intention of the American Congress to ensure a vibrant maritime industry is clearly stated in the most recent revision of the United States Code, a consolidation and codification of American laws. The objectives of cabotage are stated to be necessary for the national defense and the development of domestic and foreign commerce of the United States, to ensure that the United States has a merchant marine that is sufficient to carry the waterborne domestic commerce and a substantial part of the waterborne export and import foreign commerce of the United States. In addition it is to provide shipping service essential for maintaining the flow of waterborne domestic and foreign commerce at all times that will be capable of serving as a naval and military auxiliary in time of war or national emergency. It is mandatory that these vessels are operated by citizens of the United States and composed of the best-equipped, safest, and most suitable types of vessels constructed in the United States and manned with a trained and efficient citizen personnel; and supplemented by efficient facilities for building and repairing vessels. It was stated that the policy of the United States is to encourage and aid the development and maintenance of a merchant marine satisfying the objectives described in this Code.

Though we cannot compare our development in this area with that of the United States of America we can aim to be serious by implementing policies and strengthening institutions in Nigeria’s maritime industry that will impact positively on revenue generation and economic growth. Nigeria’s potential for growth and poverty reduction are yet to be realized and will never be realized if Government policies are not fully implemented. Like the United States of America we should constantly review policy relating to cabotage to ensure that our institutional and legal framework is updated to suit modern trends.

Malaysia’s cabotage policy dates back to January 1, 1980. Like the Nigerian Maritime Administration and Safety Agency, Malaysia set up the Domestic Shipping and Licensing Board to implement its cabotage policy. It should be noted that all Malaysia’s oil and gas fields are located offshore.

Section 65A of Part 11B of Malaysia’s Merchant Shipping Ordinance of 1952 defines “domestic shipping” as the use of a ship to provide services in the territorial waters of Malaysia and the exclusive economic zone for the shipment of goods or the carriage of passengers from any port of place in Malaysia to any port or place in Malaysia or the
exclusive economic zone. A vessel that services the Malaysian oil and gas fields must be registered as a Malaysian ship and must hold a domestic shipping license, unless exempted under the Ordinance or by the Minister of Transport.

Malaysian cabotage laws are similar to those in Nigeria and it is evident that the Malaysian indigenous shipping sector has been supported by the Government’s will to turn this sector into a multi-billion dollar revenue generator for Malaysia. Likewise in China the China Shipping Group owns over 500 ships with a capacity of 30m dwt.

A big loophole in the Cabotage Act, 2003 is the provision of waivers for foreign owned vessels which some may say has been responsible for the failure of cabotage in Nigeria. Section 9 of the Act provides that the Minister for Transport may grant a waiver to a registered vessel, 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. This provision has been a big cog in the wheel for Nigerian shipowners. The reason being that they have been excluded largely from participating in transporting oil in coastal and inland waters. This trade is exclusively foreign and has given rise to the flight of foreign exchange, the non-development of local capacity in the sector and the loss of trillions in revenue terms.

It is also apparent that applications for waivers have been made in respect of foreign tanker ships and anchor handlers both of which our local ship owners are able to provide. Most of the foreign vessels are involved in the transportation of oil without obtaining waivers. This has placed our indigenous shipowners among some of the poorest in the world. In fact this critical state of affairs has necessitated the drafting of new waiver guideline for foreign vessels wishing to participate in coastal shipping. The new guidelines when implemented will require that foreign vessels submit a Cabotage Waiver Form 60 days before the arrival of the vessel in Nigerian waters.

In the United States, the United States Maritime Administration reviews waiver requests on a case-by-case basis. Waivers have been granted in cases of national emergencies or in cases of strategic interest. In the wake of Hurricane Katrina, Homeland Security Secretary Michael Chertoff temporarily waived the coastwise laws for foreign vessels carrying oil and natural gas from September 1 to 19, 2005. Similarly the Department of Homeland Security issued a temporary blanket waiver of the Jones Act for the shipment of petroleum products following widespread fuel shortages caused by Hurricane Sandy.

The Cabotage Act has done little to build indigenous capacity in shipping. Our shipowners are largely indebted to banks in a bid to stay in business. The Cabotage Vessel Finance Fund (CVFF) designated as a special fund to develop local shipping has about N50 billion still waiting to be disbursed to Nigerian shipowners. One reason advocated by industry analysts
for this has been brought about by policy inconsistency. It should be noted that NIMASA has been riddled with controversy by the frequent appointments of several director-generals over the years. NIMASA is one of the richest government agencies that is overburdened with a plethora of functions including, cabotage enforcement, safety and security of inland and coastal waters, administration of the CVFF, licensing etc. The time has come to unbundle NIMASA such as was done with the National Electric Power Authority for better administration and function.

Though there have been several attempts by the Indigenous Shipowners’ Association (ISAN) to enforce cabotage Nigerian shipowners have, to coin a phrase, ‘been left up the creek without a paddle’. There are two landmark cases that exemplify the resolve of the Indigenous Shipowners’ Association (ISAN) to take the bull by the horn as interested parties to enforce cabotage. In the case of Indigenous Shipowners’ Association (ISAN) & Another vs. Lovell Sea & 3 Others the plaintiffs, ISAN, challenged the propriety of the use of the 1st defendant, a foreign vessel by the 2nd – 4th defendants to carry out cabotage trade within the cabotage jurisdiction of Nigeria. It was the plaintiffs’ contention that the 1st defendant not being registered as a cabotage vessel or granted a waiver or restricted license to operate within the cabotage jurisdiction had infracted on their guaranteed rights under the Cabotage Act, 2003. The Federal High Court judge in this case held that the defendants were in deed in violation of cabotage and gave judgment to ISAN for the loss suffered by it.

However, in the case of the Indigenous Shipowners’ Association (ISAN) vs. M.T Makhambet, ISAN commenced an action at the Federal High Court Lagos and sought inter alia an order of injunction restraining the Defendants from further carrying on cabotage trade within the Nigerian Exclusive Economic Zone prior to or without their complying with the Cabotage Act. The defendants challenged ISAN’s locus (right) to institute the action. The Federal High Court held that the plaintiff did not prove that the defendants contravened the provisions of the Cabotage Act and struck out the case of the plaintiffs. Though this case went on appeal to determine two fundamental issues relating to the right of the plaintiffs to reliefs not sought by them, this case still represents the position taken by our indigenous shipowners and against all odds their determination to enforce cabotage in Nigerian waters.

These two cases show the effort made by the Indigenous Shipowners’ Association to safeguard their business by enforcing cabotage. As the regulatory body NIMASA has an inherent duty to enforce cabotage, unfortunately this duty has been ignored in the face of the huge sums of money that NIMASA realizes annually from waiver levies.
In conclusion, we see that cabotage has failed woefully to build indigenous capacity in shipping which has resulted in the loss of trillions of Naira in revenue for the government. To turn things around will require a cabotage enforcement action plan which will involve a review of the Cabotage Act especially Sections 2, 3, 5, 9, 10, 11, 12, 15, 22, 23, 29, 33 and 39. The maritime industry needs a total overhaul of legal and regulatory framework. It is crucial that stakeholders come together to seriously discuss the industry and lay down an ACTION PLAN that will be presented to government for immediate implementation. Cabotage presently is not working and will not work until certain parameters are reviewed, revised and restructured. There is no rocket science required to understand the fundamentals of having a vibrant and robust shipping sector. Job opportunities such as Seafaring, Stevedoring, Operators, Managers, Brokers, Dockers, Ship-builders, Charterers, Freighters, Cargo handlers, Insurers, legal services etc the list goes on and on, will eventually be created and contribute to the Nation’s GDP. There is a dire need to transform infrastructure in the sector for better cabotage effectiveness. Our ports system will have to be re-evaluated which may necessitate the quick passage of the Ports and Harbour Bill by the National Assembly. The Bill will give legal backing to the privatization of the ports and will encourage foreign and domestic investment when passed into law. A wind of change is blowing through the maritime industry and it is crucial that all stakeholders are emboldened to collaborate in order to revamp the sector.

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