

CABOTAGE AS A MEANS OF DEVELOPING THE  
SOUTH AFRICAN MERCHANT FLEET

by

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## **ABSTRACT**

The aim of the study is to examine the potential use of cabotage in growing the South African ship register and in creating conditions for the development of the South African merchant fleet. The study explores the adoption of a cabotage regime that would encourage the growth of the South African ship registry and assesses the mitigation of maritime related legislation to accommodate the implementation of cabotage for fleet growth purposes. Cabotage is the coastal trading of a vessel from one port to another within a single country's territorial boundaries. It is a term that is used to enforce restrictions on a country's coastal trade, and it can be strict or liberal. A strict cabotage regime is one in which maritime operations along a country's coast are restricted to indigenous ships, while a liberal cabotage regime is one in which foreign-owned ships are not discriminated against and their involvement in the country's coastal trade industry is unrestricted. The thesis follows an interpretivist paradigm, in which the researcher explores alternative means of developing the merchant fleet. This research is a desktop study that uses secondary data and employs a descriptive qualitative design. Both data collection and analysis were conducted using qualitative content analysis. The research poses three main questions. The first research question looks at the current status of the South African ship registry, which the study reveals is based on a registry carrying only five merchant ships despite government interventions to make the South African ship registry attractive to foreign shipowners. The second research question looks at whether cabotage can encourage the growth and development of the South African ship register. To this, the study found that the strict cabotage regime is suitable when seeking to encourage the growth of the South African merchant fleet. The third research question closely relates to the second research question. It deals with measures that government can adopt to implement and regulate cabotage in order to encourage growth of the ship registry in South Africa. The study found that adequate funding is fundamental to the initialisation of cabotage in South Africa as it would allow locals to finance ships and substitute foreign flags trading on the coast. Lastly, an examination of the adoption and implementation of cabotage in India and China was conducted to determine how South Africa can implement and regulate cabotage in comparison to its trade partners. Strict cabotage as adopted in China was indicated as the appropriate course for South Africa. Although the aim was to establish which of the two cabotage regimes would support the development of a merchant fleet, there were vital lessons to be learned from both China and India cabotage regimes. It is therefore recommended for South Africa to take cognisance of the current status of the ship registry in view of the requirements of a strict cabotage regime on building, ownership, flagging, crewing and manning of the cabotage ships in South Africa.

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## **ACRONYMS AND ABBREVIATIONS**

AIMS	Africa's Integrated Maritime Strategy
AU	African Union
BRIC	Brazil, Russia, India, China
BRICS	Brazil, Russia, India, China, South Africa
CMTP	Comprehensive Maritime Transport Policy of South Africa
DoT	Department of Transport of South Africa
DGS	Directorate General of Shipping
EEZ	Exclusive Economic Zone
EU	European Union
FOC	Flag of Convenience
GDP	Gross Domestic Product
ITF	International Transport Worker's Federation
INSA	Indian National Ship Owners' Association
NoC	No-objection Certificate
ROC	Republic of China
SADC	Southern African Development Community
SAMSA	South African Maritime Safety Authority
UK P&I	United Kingdom Protection and Indemnity Club
UKZN	University of KwaZulu-Natal
UNCLOS	United Nations Convention on the Law of The Sea
UNCTAD	United Nations Conference on Trade and Development

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# CHAPTER ONE – INTRODUCTION

## 1.1 INTRODUCTION

The United Nations Convention on the Law of the Sea (UNCLOS), 1982, is an international law that governs the rights to the high seas and coastal waters afforded to different countries of the world, whether coastal or landlocked. UNCLOS provides countries with rights and jurisdiction over their territorial waters, the contiguous zones and the exclusive economic zone (EEZ).<sup>1</sup> South Africa has identified and adopted jurisdiction over its territorial water, contiguous zone, maritime cultural zone, EEZ and the continental shelf under the Maritime Zones Act, 1994. Under this Act, South Africa has stated its right to economic exploitation and exploration of its EEZ for the benefit of the country, as prescribed by UNCLOS (Maritime Zones ACT of 1994). According to Bello-Olowookere (2011: 5), cabotage refers to the transportation of cargo or passengers from one South African port along the coast to another South African port. The absence of national policies and regulations has made it difficult for South Africa to gain control of and therefore to benefit from its coastal waters. In an attempt to deal with this particular issue, the South African Government developed a policy called The Comprehensive Maritime Transport Policy of South Africa (CMTP) in June 2017 (Department of Transport, 2017).

Through the CMTP, the South African government intends to develop a cabotage policy with the aim of regaining control over its coastal waters and to benefit from the ocean economy. Furthermore, the government intends to create a financial environment that will encourage South Africans to buy and register ships built in South Africa, and also develop measures to encourage other ship owners to register their ships in South Africa (Department of Transport, 2017). This paper considers the potential benefits of a cabotage regime for South Africa and, in particular, how the adoption and implementation of cabotage can be employed to grow the South African Ship Register. Chapter 1 of the study introduces the reader to the topic and provides the background and problem statement of the study, in order to provide context regarding the aim of the study. The objectives of the study and the research questions are also outlined in this chapter.

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<sup>1</sup> (a) Baseline – a baseline as contemplated in subsection (1), (2) or (3) of section 2 of the Maritime Zone Act, 1994 (Act 15 of 1994). (b) Territorial Waters – the sea within a distance of twelve nautical miles from the baseline. (c) Contiguous Zone – the sea beyond the territorial waters, but within a distance of twenty-four nautical miles from the base line. (d) Exclusive Economic Zone – the sea beyond the territorial waters, but within a distance of two hundred nautical miles from the baseline.

## **1.2 BACKGROUND OF THE STUDY**

South Africa is part of the international trade market, by virtue of its participation in the export and import of goods to and from other countries, and because of its strategic geographical position. South Africa is bordered by both the Indian and Atlantic Oceans, on one of the most significant trade routes that connect the East and the West international sea trade (Dyer, 2017: 4). Dyer (2017) states that South Africa has a coastline of approximately 2758 kilometres and an EEZ covering some 1.54 million square kilometres and is a country with the second longest coastline in Africa, after Somalia. Approximately ninety-eight per cent of South African cargo is exported out of the country on ships that are neither owned nor flagged in South Africa (Hutson, 2012). Currently, there are only five merchant ships on the South African Ship Registry: Cape Acacia; Cape Enterprise; Windsor Adventure; Lefkas; and Greatship Manisha (SAMSA, 2021; Bizcommunity, 2016 and Odendaal, 2017). Out of the five ships, the Cape Acacia, Cape Enterprise and Windsor Adventure are the only three ships engaged on international trade, serving the South African mines, they are used to export iron ore from Saldana Bay to other countries (SAMSA, 2019). Lefkas is employed in the bunkering services in Algoa Bay, whereas the Greatship Manisha is a supply and support vessel in Mossel Bay. In the past, traditional maritime nations would have their cargo moved by ships owned and flagged by locals, however, more than seventy per cent of the world fleet is currently registered in foreign countries (UNCTAD, 2017: 32). Such is the case in South Africa, with the majority of the cargo coming into or leaving the country being carried by foreign flagged ships.

Countries have been using cabotage as a means of promoting the establishment and development of a national fleet, i.e. by restricting their coastal shipping to indigenous ships and thus excluding, either totally or partially, participation in coastal shipping by foreign-flagged ships (Odeke, 1984: 75). The concept of maritime cabotage or coastal navigation means the exclusion of foreign-flagged ships from the local or national goods carriage (Akpan, 2018:6). Cabotage laws have for the longest time served to guard the national coastal business and restrict trading to national ships that are operated and owned by state shipping businesses or citizens as well as the trade undertaken between metropolitan nations and allies or colonies (Konstantinus, Zuidegeest, Christodoulou, Raza & Woxenius, 2019:1532). Maritime cabotage entails limited reservation of sea traffic, that is inland and coastal water operations in the national territory. Cabotage policies across the globe require shipping business owned by the country's indigenes as well as ships registered, built, and manned in that nation to serve the domestic trading between two ports of that specific nation (Anele, 2018:91). Therefore, it is commonplace to state that nations introduce cabotage to develop, encourage, sustain, and protect aboriginal involvement in a country's inland and coastal shipping.

Article 11 of the 1993 African Maritime Transport Charter highlights the implementation of protected cabotage regimes (African Union, 2020). While Africa's coastal areas are significantly unregulated the African Union's Revised African Maritime Transport Charter of 2010 emphasises the enforcement of cabotage provisions, supports the establishment of state cabotage shipping businesses as well as regional maritime cabotage lines of shipping to encourage intra-African trading and the enabling of the African socio-economic and financial integration. An introduction of the needed cabotage laws in all thirty-eight (38) nations on the African coastline is occurring at different times, making the realism of an African cabotage region a far reality (African Union, 2020). Trade on Africa's coastal waters remains dominated by the non-African shipping businesses to an extent that a majority of Africa's raw materials and commodities are often over-priced, swapped for low quality, and foreign-produced goods still brought in by foreign ships (Wong, Wong, Mo & Leung, 2019:464). In order for South Africa to exploit the economic benefits of its coastal waters, implementation of a cabotage policy is imperative. As Odeke (1984) suggests, implementing cabotage will assist with growing the national fleet and therefore with growing the South African Registry. Various countries have adopted a cabotage regime that is suitable and economically beneficial for them. South Africa developed the Comprehensive Maritime Transport Policy (CMTP) in 2017 to facilitate development and growth of South Africa's marine transport systems, support socio-economic growth of the nation while contributing to international trade (Walker, 2018:1). According to the CMTP, cabotage means a vessel's trade transit along South Africa's coast within the regional boundaries of South Africa. In section 107, the CMTP states that the 2010 Revised African Maritime Transport Charter advocates restricting cabotage at regional, continental and sub-regional level (Department of Transport, 2017). Therefore, by offering thirty-eight (38) policy statements, South Africa's CMTP establishes the desired result of a transformed and effective cabotage market and coastal shipping. Cabotage regimes can be either restrictive or liberal, depending on the maritime policies of that particular country.

### **1.2.1. Restrictive Cabotage Regime**

A restrictive or protectionist maritime cabotage approach is derived from the principles of reserving all coastal trade for indigenous registered vessels (Akpan, 2018). The maritime policies within that country regulate all of the maritime activities in its coastal waters, and these policies impose tedious requirements on foreign maritime operators looking to engage in coastal trade and other maritime services, such as towage, hydrographical surveys, seismic surveys and salvage services (Akpan, 2018). In order for a ship to operate in the country's coastal waters, it: must be built, rebuilt or repaired in that country; owned and/or operated by a local company; registered in that country and manned by local seafarers.

### 1.2.2. Liberal Cabotage Regime

A liberal maritime cabotage means a country imposes fewer requirements on ships conducting coastal trade and other maritime activities in its coastal waters. Countries usually adopt this regime due to a lack of resources or the skilled manpower required to conduct maritime activities in their coastal waters. Normally, all ships can engage in coastal trade and maritime services where there is a liberal cabotage regime, irrespective of: where the ship was built or rebuilt; the flag it flies; the nationality of the owners or operators; and the crew it employs (Akpan, 2018).

A substantive review of these two regimes is provided in the next chapter. An outline of each regime is provided, in an attempt to suggest which would be more suitable for South Africa. South Africa needs to ensure that it adopts a regime that will provide opportunities for South Africans to participate in the coastal trade industry, using ships registered in the country. A restrictive or protectionist cabotage regime is the regime that requires for ships engaged in coastal trade to be registered in that particular country and to fly that country's flag. However, South Africa is part of the African Union (AU) as well as of Southern African Development Community (SADC) and it may not alienate its African trade partners. As a member of SADC, South Africa is required to permit cabotage by ships registered in countries that are part of SADC (SADC Protocol on Transport, Communications and Meteorology, Art 8.2).<sup>2</sup> Furthermore, in the Revised African Maritime Transport Charter 2010, the AU encourages its members to establish a national or regional cabotage industry to foster intra-Africa trade and aid the continent's economic and socio-economic integration. It further encourages the development of a continental cabotage shipping line.<sup>3</sup>

In 1996, the South African government released the White Paper for the National Transport Policy. The purpose of this white paper was to relook and revamp the transport policies in the country to make them relevant and more suitable to the newly-formed democratic South Africa. In the white paper, the government identifies transport as one of the five most important areas that could assist with the socio-economic development of the country (Department of Transport, 1996). In the maritime section, the white paper indicates that the Department of Transport (DoT) should investigate the development of a cabotage policy that would be suitable at a continental level or at the Southern Africa level.

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<sup>2</sup> SADC Protocol on Transport, Communications and Meteorology: Article 8.2 Maritime and Inland Waterways Transport Policy. 8.2.3 Member States permitting cabotage by ships registered in another Member State, affirm their intention to maintain their current policy.

<sup>3</sup> Revised African Maritime Transport Charter 2010: Article 15 Trans-African Cabotage. 15.1 State Parties shall promote Cabotage and effective participation of private sector operations at national, regional and continental level. 15.2 To this end, the establishment of a national and regional maritime cabotage shipping lines should be encouraged in order to promote intra-African trade and facilitate the economic and socio-economic integration of the continent

The government of South Africa launched Operation Phakisa, in order to prioritise and fast track its projects aimed at eradicating poverty, unemployment and inequality, in line with the National Development Plan of 2030 (Operation Phakisa, 2014). In a speech made during the launch of the programme, former president, Jacob Zuma, said that the government has put together teams that would work together to unlock the potential of the ocean's economy, citing the low number of ships on the South African register as a matter of concern when considering the movement of cargo in and out of South Africa (Zuma, 2014). In the Ocean's Economy lab, Operation Phakisa (2014) identified eighteen initiatives under the marine transport and manufacturing programme. The 18th initiative is an incentive aimed at ensuring market growth. It is a recommendation for the government to support a local registry of ships by using incentives and implementing legislation to encourage cargo owners to use South African-registered ships to move cargo and for coastal operations (Operation Phakisa, 2014). This initiative, together with a cabotage policy, would assist with growing the South African Ship Registry and would encourage coastal shipping activities to be reserved for locally-registered ships.

### **1.3 PROBLEM STATEMENT**

“It is estimated that the ocean's economy has the potential to contribute up to R177 billion to gross domestic product (GDP) by 2033 (compared to R54 billion in 2010) and would create approximately 1 million jobs (compared to 316 000 in 2010)” (Operation Phakisa, 2017). The government of South Africa has confirmed that there is potential for growth and development and job creation in the coastal waters industry. Coastal shipping remains part of the ocean's economy that South Africans have not fully explored and taken full advantage of, in terms of controlling the market. This study looks into the nature of the South African maritime industry and how the coastal shipping market can provide opportunities to grow registration of ships in South Africa. The focus is on the need for the South African government to develop and implement a cabotage policy, as required by both the Comprehensive Maritime Transport Policy and the African Maritime Transport Charter (Department of Transport; 2017) (African Maritime Transport Charter; 2010). The research sought to determine how the implementation of cabotage in South Africa could aid in reviving the ship register and what amendments, if any, could be made to the current ship registration legislation to allow ships to participate in coastal market activities.

### **1.4 AIM OF THE STUDY**

The aim of the study is to examine the potential use of cabotage to grow the South African ship register and to create conditions for the development of the South African merchant fleet.

## **1.5 OBJECTIVES OF THE STUDY**

The objectives of the study are:

- To explore the adoption of a cabotage regime that would encourage the growth of the South African ship registry.
- To assess the mitigation of maritime related legislation to accommodate the implementation of cabotage for fleet growth purposes.

## **1.6 RESEARCH QUESTIONS**

- What is the current status of the South African ship registry?
- How will a cabotage regime encourage the growth and development of the South African ship register?
- Are there measures can the government take to implement and regulate cabotage, in order to encourage growth of the ship registry in South Africa?
- How can South Africa implement and regulate cabotage in comparison to its trade partners China and India?

## **1.7 RATIONALE**

The preliminary observations revealed that South Africa is facing challenges in growing the ship register. Previously, South African legislation was either misaligned or did not encourage ship owners to register their ships in South Africa. Therefore, the South African government revamped the legislation by amending the Ship Registration Act, Act 58 of 1998 introducing the Tonnage Tax, and removing taxation of South African seafarers. The South African government implemented a tonnage tax regime, which is a form of tax levied on shipping firms based on the total tonnage of their entire fleet of vessels in service, in an attempt to make the domestic shipping register more appealing to foreign ship owners (Department of National Treasury, 2008). The use of a tonnage tax regime was intended to keep long-term trade facilitation efforts going, reduce high transportation service payments to the rest of the world, and expand crewing opportunities for South African seafarers. Despite these changes, South Africa has not seen significant growth in the number of ships on its register. The purpose of the research was to investigate how South Africa could use a cabotage policy to gain control of its coastal trade and create opportunities for South Africans. A clear cabotage policy might assist with growing the number of South African flag-registered ships, which would result in more benefits to the country. It would, therefore, also contribute to the vision of the BEE

Maritime Charter of “Ship South Africa”, which promotes the need to have South African cargo carried by South African ships (Government Gazette 32511, 2009).

## **1.8 LIMITATIONS OF STUDY**

A research of this scope cannot be performed without any difficulties. The use of secondary data poses challenges such as data availability, the format in which the data is presented, and the reliability and quality of data used. The severity of these issues varies depending on the source and the researcher should always bear in mind the validity and reliability, personal bias and availability of data. The researcher experienced challenges with data availability whereby there is limited information or data relating to cabotage in South Africa. It is worth noting that, the topic of cabotage in South Africa is new and there is dearth of data on the subject matter. The few papers or journals available required the researcher to either purchase the paper or pay a subscription fee to the publishing website. Additionally, other challenges included articles, books or journals that were written in various languages other than English with no translated options provided. The researcher used data collected from government websites, maritime professional journals and research paper accessed via the University of KwaZulu Natal (UKZN) Online Library portal. This assisted the researcher to overcome the reliability and validity issues related to the data used in the research.

## **1.9 SCOPE OF STUDY**

The primary goal of the research report is to look into the use of a cabotage regime to grow the South African ship register and to create conditions for the development of the South African merchant fleet. To achieve this, the researcher reviewed the cabotage regimes (restrictive or liberalized) adopted in China and India and analysed how the adopted regimes have influenced the ship registry in those countries. The focus on China and India was to enable South Africa to make a determination which cabotage regime will be better suited and offer the greatest potential for growing the South African Ship Register. South Africa, India, and China are all members of BRICS, with China and India regarded as leading the pack in the maritime domain. China and India are two of South Africa's largest trading partners in Asia, and these trade relations predate the formation of the BRICS, with South Africa regarded as China's comprehensive strategic partner and the largest home of the Indian Diaspora in Africa.

## **1.10 SUMMARY OF THE CHAPTER**

This Chapter introduced the reader to the concept of coastal trade and how countries have the right to control and benefit from their coastal waters, as defined in UNCLOS (1982). The chapter provides a brief background on the South Africa's coastline and the movement of cargo out of the country. The chapter further provides the current status of the South Africa's ship registry and government's

initiatives in relation to the exploration and exploitation of its coastal waters, in order to facilitate the growth and socio-economic development of the maritime industry. This chapter also introduces the reader to the concept of cabotage and explains the need for South Africa to develop and implement a cabotage policy. The two types of cabotage regimes that have been adopted by other countries were also explained. The problem statement, research aim, research objectives, research questions, rationale scope and limitation for the research were stated, so as to outline the direction that the research followed.

## **1.11 ORGANISATION OF THE STUDY**

This report on the research study is organised as follows:

**Chapter 1** - This chapter serves as an introduction and orientation to the study, focusing on the study's problem statement and rationale. The research's aim and objectives are outlined in this chapter. It also addresses the study's significance, as well as the background of cabotage and how its adoption will benefit South Africa.

**Chapter 2** – This chapter presents the literature review conducted using relevant sources identified in the preliminary research. The literature review provides the historical context of cabotage, its adoption and application in various countries in an attempt to prescribe a regime that South Africa can adopt. Furthermore, the chapter analyses the concept of ship registration and how cabotage can be used for fleet development.

**Chapter 3** – This chapter outlines the research methodology used to identify, select, process, and analyse information about the research topic. It also provides a description of the research process and paradigm of the study, explaining the population and sampling procedure used, the data collection method and the analysis tools used.

**Chapter 4** – This chapter discusses the findings and results of the study. It explores the adoption of a cabotage regime to encourage the growth of the South African ship registry and assesses the mitigation of maritime-related legislation to accommodate the implementation of cabotage for fleet growth purposes.

**Chapter 5** – This chapter presents the summary of the findings and the conclusion of the study. The researcher explains the challenges encountered in the study and provides recommendations for further studies.

## **CHAPTER TWO: LITERATURE REVIEW**

### **2.1. INTRODUCTION**

The purpose of this chapter is to present a theoretical framework by which to address the research questions and objectives of the study. The chapter details the literature review conducted pertaining to cabotage and registration of ships. The literature review focuses on the historical context of cabotage and how it is defined by various countries. The review starts by defining the term cabotage and then explains the two cabotage regimes that are used: strict cabotage and liberal cabotage. Strict cabotage will be discussed in terms of policies adopted by China. The liberal cabotage regime is discussed in reference to India. The area of focus includes the two types of cabotage policies and how they are adopted in the selected countries, i.e. China and India. Together with South Africa, China and India are members of an association of emerging economies referred to as BRICS. Deepak (2016) indicates that these countries joined forces in order to become stronger - both politically and economically - in order to compete with more developed countries. These countries (excluding South Africa) have adopted a cabotage policy and the research analysed their policies as a point of reference for a future policy for South Africa. The intention was to determine if cabotage could be used to grow the merchant fleet and, if so, which cabotage regime would be more suitable for South Africa.

In endeavouring to assess cabotage as a potential instrument for fleet development, the concept of ship registration and the factors that ship owners take into consideration in choosing where to register their ships was analysed. The discussion of choice extends to the different types of ship registration, which is reflective of the shipowner's preference. The shipowner's preference is then juxtaposed with the South African ship registration situation. The purpose of the review was to determine if the current ship register offered in South Africa under the Ship Registration Act 1998 is suitable for use with cabotage implementation or if it needs to be amended.

### **2.2. DEFINING CABOTAGE**

Cabotage is a shipping term that originates from the French word *caboter*, which translates into "sailing along the coast" (Llanto and Navarro, 2014: 1). However, Odeke (1984) postulates that cabotage is originally from the Spanish word *cabor*, which refers to navigating a ship "from cape to cape along the coast without going out into the open sea". Although the etymology of cabotage is limited to shipping goods along the coast, aviation, railways and road transportation have also adopted the practice of cabotage (Agama and Alisigwe, 2018: 71). Currently, cabotage is also referred to as "coastal trade" or "coasting trade" or "coastwise shipping". Therefore, the term cabotage has

different meanings, depending on the context in which it is found. Duhaime's Legal Dictionary defines cabotage as: "Trade transit of a vessel along the coast (coastal trading), from one port to another within the territorial limits of a single nation". UNCTAD defines maritime cabotage as: "The transportation of goods and passengers by sea between two ports located in the same country" (UNCTAD, 2017: 9). However, Igbokwe (2006) expands on the definition of cabotage by not only referring to it as "the transportation of passengers or goods between ports on or along the same coast or between ports in the same country" - he extends the definition to cover "a country's exclusive rights to control sea traffic within its coasts" (Igbokwe, 2006).

Akpan (2018) opines that maritime cabotage is the freedom or lack thereof of foreign ships to participate in maritime activities on the coast of another country. He also postulates that maritime cabotage has evolved and that some countries have expanded its adoption to more than just coastal navigation, so that it now includes the control of any maritime activity in the country's territorial waters, such as pilotage, tug services, towing and cargo handling and warehousing (Akpan, 2018: 36). This prerogative of a country to control any maritime activity along its coast is provided for under UNCLOS, and this right does not end at the territorial waters but extends to the EEZ (UNCLOS; 1982).

### **2.3. CABOTAGE REGIMES**

States have adopted cabotage policies and laws that enforce control of maritime activities in their coastal waters. The cabotage policy adopted by a state is dependent upon the country's geographical characteristics, and its socio-economic interests and political interests (Casaca and Lyridis, 2018: 212). Furthermore, Bello-Olowookere (2011) indicates that the determining factors for a government to adopt cabotage range from national security to the urgent demand of national interests, in terms of boosting the economy and creating jobs for its citizens. The primary considerations of a state in adopting a cabotage law are to reserve the right of participation in its domestic maritime trade for local citizens (Seafarers' Rights International: 2018, 36). UNCTAD (2017) states that the rationale for states to adopt a cabotage policy was to create an environment that allows local shipping companies to carry locally manufactured cargo, in order to protect local waterways and to ensure strategic shipments of goods and timeous deliveries. Therefore, the type of cabotage policy enacted by a government can either be restrictive or liberal, depending on the objectives of that country.

#### **2.3.1. Strict cabotage regime**

Most maritime states, both developed and developing, have adopted policies that provide a protectionist measure by restricting access to their cabotage market (Hodgson & Brooks, 2004: 10). A strict cabotage regime is one in which maritime activities along the coast of that country are

reserved for indigenous ships. According to Agocha (2008), a “strict” cabotage regime is one whereby participation in domestic trade is reserved for:

- Ships that are built in the country.
- These ships should be owned by citizens of that country.
- The ships should be manned and operated solely by citizens of that country.

According to Agama and Alisigwe (2018), 54 nations have adopted the strict cabotage regime, purely to promote their national-flag fleet. Furthermore, they suggest that in a strict cabotage regime, there is a deliberate intention to protect the country’s domestic maritime industry (Agama & Alisigwe, 2018: 73). It is also employed for security purposes by some countries (Agama and Alisigwe, 2018: 73).

### **2.3.2. Liberal cabotage regime**

A liberal or relaxed cabotage regime is one in which a country has adopted a policy that does not discriminate against foreign-owned ships and restrict their participation in its coastal trade industry. Ruppel and Biam (2016: 31) opine that the main objective of cabotage restrictions is to create employment for local merchant ships by prioritising work for local shippers. Conversely, a relaxed cabotage regime is one whereby a state does not impose any restrictions on its coastal trade activities. Cole (2010) refers to the liberal cabotage regime as a “very open cabotage” approach that is characterised by a very easy process for foreign vessels to obtain authorisation to operate within the coastal trade industry. He opines that the adoption of a “very open cabotage” regime is highly influenced by a very under-developed or domestic shipping industry (Cole, 2010). Akpan (2018) defines a country with a liberal cabotage regime as one that generally imposes fewer requirements on ships conducting maritime activities in its coastal waters. Furthermore, any ship is allowed to participate in the coastal trade industry, irrespective of its flag, its owners, its place of build or the nationality of its crew (Akpan, 2018: 236). He further states that some states have adopted a liberal cabotage regime, in order to encourage a competitive market that will boost economic growth (Akpan, 2018). New Zealand is one of such states that adopted a liberalised cabotage regime with the intention of advancing the competitiveness of its national economy (Brooks, 2009).

## **2.4. CABOTAGE IMPLEMENTATION IN CHINA AND INDIA**

### **2.4.1. Cabotage implementation in China**

The Maritime Code of the People’s Republic of China and the Regulations of the People’s Republic of China on International Ocean Shipping governs cabotage in China. Article 4 of the Maritime code states:

*“Maritime transport and towage services between the ports of the People's Republic of China shall be undertaken by ships flying the national flag of the People's Republic of China, except as otherwise provided for by laws or administrative rules and regulations. No foreign ships may engage in the maritime transport or towage services between the ports of the People's Republic of China unless permitted by the competent authorities of transport and communications under the State Council.”*

Article 28 of the Regulations of the People's Republic of China on International Ocean Shipping states:

*“Foreign shipping operators shall observe the relevant provisions of these Regulations when engaging in the relevant activities of international shipping as prescribed in this Chapter. Foreign international shipping operators may not operate the shipping business between Chinese ports, neither may they operate the shipping business between Chinese ports in disguised forms such as using the rented Chinese ships or shipping space, or exchanging the shipping space, etc.”*

Foreign flagged vessels may not navigate between any Republic of China (ROC) ports to transport passengers and cargoes, unless a franchise is granted (Rong-Her, 2013: 75). Coastwise trading in China is reserved for indigenous ships, and foreign ships can only enter the cabotage market if permission is granted from the authorities.

In 2013, the Chinese Government relaxed its cabotage policy, by allowing foreign flagged vessels to carry empty containers on the trade route between the Shanghai Free Trade Zones and other Chinese ports, without having to obtain a permit (Casaca and Lyridis, 2018). However, the cabotage relaxation is only applicable to foreign flagged vessels that are fully or partly owned by Chinese-funded companies that are registered in China, and these companies are not allowed to sub-let their ships to a third party (UK P&I Club Legal Briefing, 2018). This suggests that the cabotage regime in China is still restrictive to a large degree. The requirements of Article 4 of the Maritime Code of the People's Republic of China have been relaxed slightly to allow only the movement of empty containers by non-Chinese vessels, in order to ease the congestion in the ports. However, the rest of the coastal trade is still reserved for Chinese flagged vessels and foreign flagged vessels that are owned and operated outside of China are still excluded from participating in the coastal trade between Chinese ports.

#### **2.4.2. Cabotage implementation in India**

Section 407 of the Merchant Shipping Act, 1958 governs coasting trade between Indian ports. The Act states:

*“ (1) No ship other than an Indian ship or a ship chartered by a citizen of India, a company or a co-operative society which satisfies the requirements specified in clause (b) or, as the case may be, clause (c) of section 21, shall engage in the coasting trade of India except under a licence granted by the Director-General under this section.*

*(2) A licence granted under this section may be for a specified period or voyage and shall be subject to such conditions as may be specified by the Director-General.*

*(3) The Central Government may, by general or special order, direct that the provisions of sub-section (1) shall not apply in respect of any part of the coasting trade of India or shall apply subject to such conditions and restrictions as may be specified in the order.”*

Parekh (2018) states that, according to Indian Law, only Indian ships are permitted to carry cargo or passengers from one Indian port to another. He further states that an Indian ship is one flagged in India or chartered to an Indian citizen or company, operating under a license granted by the Director General of Shipping (DGS) (Parekh, 2018). However, Mahajan (2018) indicates that, in the absence or the unavailability of local ships in India, foreign-flagged ships can transport cargo within the country, provided that they obtain a license from the DGS in the Union government.

There are three types of licenses that the DGS can issue to foreign flagged ships before they can participate in the coastal trade economy, namely: a general license; a license for the whole or any part of the coasting trade of India; or a license for a specified period or voyage. However, issuance of the license is based on the foreign ship obtaining a No-objection certificate (NoC) from the Indian National Ship Owners' Association (INSA), which certificate is granted if none of its members show interest in carrying the cargo (Mahajan, 2018). (INSA is a Mumbai-based trade association and lobby group of domestic shipping companies.) Although cabotage in India, as per the Merchant Shipping Act, is restrictive, the Indian government has issued periodic relaxations of the cabotage requirements in the past and allowed participation by foreign flagged vessels in the coastal trade for various reasons. Mahajan (2018) and Pareck (2018) argue for and against, respectively, the latest cabotage relaxation by the government of India, which was on 21 May 2018. That cabotage relaxation allows foreign vessels to carry export-import (EXIM) trans-shipment containers, empty containers, and fisheries, animal husbandry, agriculture and horticulture products without any special license (Mahajan, 2018).

In summation, India and China initially adopted cabotage policies that portrayed elements of a strict cabotage regime. However, over a period of time, with the high demand in the shipping industry, resulting into bottlenecks at container terminals both countries began to partially relax their policies. In 2018, India opted to relax its cabotage requirements for certain ports and cargoes, allowing foreign flagged vessels to operate without the relevant license, as required by section 407 of the Merchant Shipping Act, 1958. However, the relaxation of the cabotage policy in China is not as generous as

that of India. In the case of China, only empty containers can be carried by foreign flagged vessels that are owned by Chinese registered shipping companies, without any requirements of flagging in China or even attaining a permit as required by the Maritime Code of the People's Republic of China.

## **2.5. SHIP REGISTRATION**

In this section the research the researcher will probe the concept of ship registration by reviewing the various types of ship registries available and the factors that influence the owner's decision in selecting a flag to fly on his/her ships. The purpose of this investigation is to examine the South African ship registry in its current state with the intention to establish how the adoption of cabotage will have a bearing on it. Flying a country's flag indicates the nationality of a ship and dictates the jurisdiction applicable to that ship. According to Article 91 of UNCLOS ships have the "nationality of the state whose flag they are entitled to fly".<sup>4</sup> Franck also indicates that the flag that a ship flies determines its nationality, and that "a ship possessing no nationality is a stateless ship, which will be denied entry by ports and will not enjoy protection in international law" (2015). Ship registration means entering the ship details into a country public records, which provides the ship with the right to fly that country's flag (Coles and Watt, 2009: 4). Ready (1998: 7) states that, amongst other things, registration of a ship is a precondition for and a determinant of a ship's nationality. He further states that registration of a ship in a particular state provides the ship with a sense of belonging to that state and abiding by its jurisdiction, the right to fly the national flag, access to diplomatic and naval protection, and the right to engage in maritime activities in the territorial waters of the state in which it is registered (Ready, 1998).

There are three different types of flag registrations: Closed or National Registry; Open Registry; Second or Hybrid Registry (Rogers, 2010). In his paper "Ship Registration: A critical Analysis", Rogers (2010) defines the different ship registers as follows:

- (a) National Register - a ship register whereby the ship owner can register his or her ship in a particular flag state where he or she is a local citizen and his or her nationality is a condition which determines his or her qualification or entitlement to do so.
- (b) Open Register – a ship register, whereby the ship owner from one country can register his or her ship in another country without his or her nationality being the determining factor in qualifying to register his or her ship.

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<sup>4</sup> 1. Every State shall fix the conditions for the grant of its nationality to ships, for the registration of ships in its territory, and for the right to fly its flag. Ships have the nationality of the State whose flag they are entitled to fly. There must exist a genuine link between the State and the ship.

2. Every State shall issue to ships to which it has granted the right to fly its flag documents to that effect.

(c) Hybrid Register – a ship register that was developed by traditional maritime states offering a combination of the National Register with Open Register features. This is an easier to access registry with fewer restrictions than the majority of national registries, but it still maintains the “genuine link” by requiring the nationality link between the ship owner or ship management and the flag state (Rogers, 2010).

### **2.5.1. Factors influencing the choice of flag**

Ready postulates that before registering a ship, a ship owner must first decide whether or not he or she wants to register under the National Registry, Flag of Convenience (FOC) or Hybrid Registry (1998). This choice will be influenced by economic factors and political factors (Ready, 1998). According to Franck, factors that may lead the ship owner to register a ship in a FOC state are mostly economical and include: (a) Easy registration process; (b) Easy flagging-out options; (c) A low tax regime on company earnings or a tonnage tax regime; (d) Freedom to employ foreign nationals; (e) Low registration and survey fees; (f) Relaxed foreign exchange controls (2015).

### **2.5.2. Flags of Convenience**

FOC, Open Registry and Flag of Necessity are terms that describes ocean-going cargo ships that are owned and operated by a company of one country while the ship is flying the flag of another country. Mendelsohn (2014) states that ‘flagging out’ is a concept that made its appearance in maritime law in the mid-1950’s, whereby ships were registered in a state other than that of the ship owner or operator, and those particular states had minimal or no connection with the ship and did not enforce any maritime legal regime over that ship. Unlike the requirements of UNCLOS Article 91, with FOC, there is no requirement for the ship owner or operator to have a genuine link to the state in which a ship is registered (1982). FOC has seen rapid growth over the years, as ship owners benefit by avoiding taxes in their countries, avoiding stringent safety laws and standards, and minimizing the cost of crews on their ships (Coles and Watt, 2009: 23). Sehgal argues that, although FOC provides ship owners and operators with the economic benefits of lower costs, more relaxed crewing requirements and less vigorous regulations, the state is itself burdened with the impossible task of ensuring security and safety standards on board (2010). The lack of a “genuine link” between the ship owner and the state that provides a FOC results in less economic contribution of the ship owner to that state. FOC have been marred with a negative reputation because the crews manning these ships have experienced poor working conditions ranging from low wages contribute to poor on-board conditions, such as insufficient food and safe drinking water, as well as long hours of work without adequate rest, all of which contribute to stress and exhaustion on board. According to International Transport Worker’s Federation (ITF, dns), the FOC regime provides ship owners with the advantage of operating at low or no taxes, and with minimal regulations imposed by the country of registration.

Although the FOC regime has developed a bad reputation, most commercial ships are registered under flags of convenience with the three leading countries being Panama, the Marshall Islands and Liberia (UNCTAD, 2018).

### **2.5.3. Hybrid register**

To compete with the open registers provided by some countries and to help their dwindling maritime fleets, traditional maritime states created a hybrid registry. According to Rogers (2010), hybrid registers were developed in response to the open registers. They offer an attractive combination of the features of a national and open registry and are intended to entice shipowners. He further states that hybrid registers unlike other national registries, they are easier to access and have less entry requirements, and that they offer advantages similar to that of open registers, in terms of relaxed crewing requirements and other financial incentives (Rogers, 2010). Hybrid registers are a form of ship registry which lies midway between a national (closed) registry and an open registry. They are described as registers that allow the owners to register their ships in their own country, albeit under slightly more relaxed conditions than that of a closed register (Hamad, 2016). The hybrid registers have been introduced with the objective of relaxing some of the restrictions associated with the closed registers, whilst still maintaining the genuine link between the ship owner/ management and the country of registration. The main purpose of developing such registers was to encourage national owners and charterers to flag their ships locally and to stop flagging-out (SA Maritime Transport Sector Study, 2011).

In summary, there are three different types of ship registration: national (closed) register; open register (FOC); hybrid register. The hybrid register is mostly adopted by countries that already have a national register, as a secondary registry that allows vessels to be registered in the country, while being subject to lesser requirements than those required by the national registry. The sole purpose is to allow foreign owned vessels to register in the country but not have to meet the nationality requirements in terms of: the domicile of the ship-owning company, where the ship was built, and the labour hired to serve on the ship. South Africa has a national (closed) ship registry in place, which is governed by the Ship Registration Act of 1998. The following section provides an analysis on the requirements that must be met in order for a ship to be registered in South Africa.

### **2.5.4. South African ship register**

This section provides an overview of the South African ship registry and the legislation governing it. The Ship Registration Act, Act 58 of 1998, governs the registration of ships in South Africa. In order for a ship to be registered in South Africa and to maintain a South African nationality, it has to meet the requirements stipulated in Section 10 of the Act 58 of 1998:

*“(1) Subject to this Chapter, the following ships are entitled to be registered:*

*(a) South African-owned ships;*

*(b) ships (other than fishing vessels) of less than 25 gross tons—*

*(i) wholly owned by residents of the Republic or by residents of the Republic and South African nationals; or*

*(ii) operated solely by residents of the Republic or South African nationals or both;*

*(c) ships on demise charter to South African nationals.”*

The South African Ship Registration Act 58 of 1998 requires ship owners looking to register their ships under the South Africa flag to have a place of business in South Africa. It also requires that ships on bareboat charter to be hired to and operated by South African nationals with the view that the nationality of the charterer or owner provides a genuine link for the purposes of ship registration (SA Maritime Transport Sector Study, 2011). Franck (2015) states that the economic benefits include job creation (seafaring jobs, commercial and technical management, insurance, surveying and refurbishing of ships) and an increase in revenue (registration fees and taxes, generation of foreign exchange and other service charges).

South Africa has been struggling to get ships onto its register, but since the inception of the revised Ship Registration Act, there have been a few additions to the register. In July 2015, Cape Orchid<sup>5</sup> became the first merchant ship to be registered on the South African register. It was later joined by the Cape Enterprise. Both these ships engaged in international voyages, carrying iron ore from Saldanha Bay and other minerals from Richards Bay to China. In 2016, there was another addition to the Register, when oil tanker MT Lefkas, which is operated by Aegean Bunkering Marine Services, was registered. The ship is engaged in offshore bunkering services at Algoa Bay. The Greatship Manisha, a multipurpose-platform supply and support vessel that operates in Mossel Bay entered the South African Registry in 2018. The last addition to the register was the Windsor Adventure, which was registered in June 2019. The changes to the Registration Act have yielded fewer positive results than expected, but the relaxation on the criteria of owners that can register, and the addition of the bareboat charter has made some difference. Registration of the new ships was possible due to the new registration regime adopted in 2003, which now allows for ships on a bareboat charter to qualify for registration under the Ship Registration Act (Nel, 2016).

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<sup>5</sup> Cape Orchid is one of the Vuka Marine fleet of bulk carriers which was scrapped in 2020 and it was replaced by Cape Acacia which entered the South African Registry in March 2021 (Hutson, 2021)

## **2.6. SUMMARY OF THE CHAPTER**

South Africa is considered to have a relaxed cabotage regime, as it does not have proper policies in place to govern its coastal trade. India and China adopted their cabotage policies to encourage the growth of their ship registries; however, due to changes in trade and other economic aspirations, the countries relaxed their cabotage policies. Both these countries are considered to have a closed ship registry and they do not offer alternative registries. Cole (2010) postulates that countries often use a permit system either to deal with the shortage of specialist offshore support vessels, tankers, exploration and floating production rigs in the oil and gas industry, or to reduce the holdups in major container hubs. However, this permit system does not have a positive outcome on a country's register, as foreign-flagged ships opt for the permit system and continue to flag their ships in foreign countries, in most cases under the FOC system.

## **CHAPTER THREE: RESEARCH METHODOLOGY**

### **3.1. INTRODUCTION**

Credible research requires an explicit, disciplined and systematic approach, in order to obtain a credible result. In this chapter, research methodology is outlined to the specific procedures or techniques used to select, classify, process, and analyse information about the research topic. The chapter addresses the research approach, i.e. qualitative research, the population and sampling techniques. In addition, data collection method and data analysis are discussed. Finally, the researcher presents a discussion on the ethical considerations and the summary of the chapter.

### **3.2. RESEARCH PARADIGM**

According to Kamal (2019), a research paradigm is a way of thinking or perception taken at a research or analysis process. It is a research method or model that is influenced by an academic institution's belief systems, ideology, performance, effectiveness, economy, and, above all, intellectual persuasion. Fraser and Robinson (2004) argue that the foundation for a research started with the selection of a paradigm. The majority of research paradigms come from one of two approaches to research: positivist and interpretivist approaches. Every research project follows one of the research paradigms as a guide for developing research methods and tackling the research project in the most relevant and appropriate way possible (ibid). The research takes on an interpretivist paradigm whereby the researcher seeks to explore alternative means of developing the merchant fleet by adopting a case study approach to analyse how China and India have adopted cabotage and what impact that has on the countries' ship registry.

### **3.3. RESEARCH APPROACH**

A research design is the “procedures for collecting, analysing, interpreting and reporting data in research studies” (Creswell & Plano Clark 2007, p.58). It is a comprehensive strategy for linking philosophical research issues to relevant empirical research. In other words, the research design determines how the required data will be collected and analysed, as well as how all of this will be used to address the research question. (Gray, 2013). Engel and Schutt (2009:9) opine that a descriptive analysis, on the other hand, usually entails the collection of data using a descriptive technique. The analysis was conducted using a descriptive design as part of a qualitative approach. Understanding, explaining, exploring, discovering, and clarifying circumstances, emotions, thoughts, behaviours, values, opinions, and experiences of a community of people is the aim of qualitative research. As a result, research designs are often deductive rather than inductive in nature, versatile and emergent in nature, and non-linear and non-sequential in their operationalization.

This study is a qualitative research that utilises data analysis to explore the possibility of using cabotage as a means of developing the ship registry. Since it is more concerned with representing terms and vocabulary rather than measurements, numbers, and numerical figures, descriptive qualitative design was deemed essential. In this study, the researcher identified, assessed and compared secondary data collected from shipping journals, cabotage policies and ship registration in China and India. Furthermore, the design allowed the researcher to draw conclusions based on the information gathered from the pre-selected shipping journals. The design was influential on the researcher's ability to identify and explain qualitative data gathered during the research process. In addition, the researcher used a descriptive qualitative research design since it is appropriate for describing areas with little to no previous knowledge.

### **3.4. POPULATION**

According to Creswell (2014), population is a group of items, events, or people who share certain common characteristics and are studied by the researcher. The complete number of all cases that meet the researcher's description of the unit of study is also known as the population. India and China are identified as the population for this study, to analyse the adoption and implementation of cabotage and how it can influence the number of ships on the registry. Apart from South Africa, these countries have adopted and implemented cabotage to regulate the movement of goods from one port to the other along their coastlines.

### **3.5. SAMPLING PROCEDURE USED**

According to Maxwell (1996), sampling refers to a process of taking a subset or selecting a representative part from an entire population. Sampling may be used to make generalizations about a population or to make inferences about a theory. This chapter outlines the research methodology used to identify, select, process, and analyse information about the research topic. The sampling procedures in this study included the rationale for selecting India and China over the other BRICS members. China and India were chosen as appropriate representatives to provide an overview on the adoption of cabotage because, during the preliminary literature review phase, it became clear that there was a reasonably sufficient amount of data to be used to discover patterns that would assist in addressing the research questions of how South Africa can implement and regulate cabotage in comparison to its trade partners. Furthermore, the process included the selection of the number of articles necessary to provide adequate coverage of cabotage in India and China. BRICS members include South Africa, India, and China, with China and India regarded as leading the pack in the maritime domain. South Africa's major Asian trading partners, China and India, predate the establishment of the BRICS, with South Africa recognized as China's comprehensive strategic partner and the largest home of the Indian Diaspora in Africa.

### **3.6. DATA COLLECTION AND ANALYSIS**

Qualitative content analysis can be used to analyse a variety of data, even if the data is derived from existing texts, the content selection must be justified by the information sought. (Patton, 2002). This research is a desktop study utilising secondary data collection to this effect, qualitative content analysis will be utilised as both the data collection and analysis tool. Bogdan and Biklen (1998) define qualitative data analysis as “working with the data, organising them, breaking them into manageable units, coding them, synthesising them, and searching for patterns”. The researcher used data collected from government websites, maritime professional journals and research paper accessed via the University of KwaZulu Natal (UKZN) Online Library portal. To gather data relevant to the research questions, the researcher used keywords such as "cabotage policy," "cabotage in China," "cabotage in India," "ship registration," "ship registrations in South Africa," and "coastal shipping in South Africa.

Qualitative content analysis involved the examination of what was written in the shipping journal and other online sources relating to the adoption and implementation of cabotage in the pre-selected countries. The aim of qualitative data analysis is to find patterns, ideas, themes, and definitions relating to the adoption of cabotage and ship registration. The collected data was first examined and coded based on its relevance to cabotage and ship registration; the coded data was then grouped based on its relevance to the research questions. Further analysis of the collected data was carried out in order to extract themes relating to the current status of South Africa's ship registration, the different types of cabotage regimes and their relationship to ship registration, and how they affect the coastal market in a country that has adopted it. Further examinations extracted themes identifying the factors that hampered the growth of the South African ship registry and measures that the South African Government can take to overcome such obstacles and ensure proper adoption and implementation of a cabotage regime. Finally, the data extracted themes are examined, highlighting the lessons that South Africa can learn from China and India in deliberation.

### **3.7. ETHICAL CONSIDERATIONS**

In this study, the researcher obtained permission from the University of Kwazulu-Natal Research Ethics Committee to conduct the study. For this analysis, secondary data was used, which was obtained using a desktop testing method with no human participants.

### **3.8. CHAPTER SUMMARY**

The research design used in the study was explained and justified in this chapter. The researcher described the nature of the study, which was based on and intended to be about exploring how the adoption of cabotage in South Africa can be used as a means of developing the ship registry. In

addition, the chapter addressed the researcher's selection of population and sampling methods, data collection, and analysis techniques for the study. Finally, the chapter discussed the study's ethical issues and limitations. The following chapter discusses data presentation and analysis.

## CHAPTER FOUR: DATA PRESENTATION AND FINDINGS

### 4.1 INTRODUCTION

This chapter presents the findings on cabotage as a means of developing the South African merchant fleet. The chapter explores the adoption of a cabotage regime to encourage the growth of the South African ship registry and assesses the mitigation of maritime-related legislation to accommodate the implementation of cabotage for fleet growth purposes. This is done firstly by analysing data on the current status of South Africa's ship register to provide an overview of the legislative framework governing ship registration and tax provisions, highlighting the obstacles posed by the legislation to the growth of the registry. Secondly, the chapter analyses data on maritime cabotage and the need for South Africa to adopt a cabotage regime. Thirdly, to assess how the cabotage regime will encourage the growth and development of the South African ship register, an examination of the strict and liberal cabotage regimes focusing on the benefits each regime affords the state that adopted it. In the fourth instance, identification of the measures that the South African government can take to facilitate the adoption and implementation of a cabotage regime that will encourage the growth of the ship registry. Lastly, a review of China and India's cabotage regime is conducted to determine which regime will be better suited to support the aspiration of growing and developing the South African Merchant fleet.

### 4.2 DATA PRESENTATION AND FINDINGS

In this section, desktop review findings have been given on:

- Current status of the South African ship registry
- How a cabotage regime will encourage the growth and development of the South African ship register
- Measures the government can take to implement cabotage to encourage growth of the ship registry in South Africa, and
- How South Africa can implement and regulate cabotage bearing in mind the practises of its trade partners in particular China and India.

<b>Research Question 1 - Current Status of South Africa's ship register</b>		<b>Number of items</b>	<b>Citations</b>
<b>Theme 1</b>	South Africans are familiar with the Ship Registration Act, No. 58 (Act No. 58 of 1998) as well as its efficient centralisation of the office of the Registrar of Ships	4	Ruppel and Biam (2016:28), SAMSA (2020), Findlay (2018), South African Government (2020).

<b>Theme 2</b>	Alignment of ship register with leading maritime laws and countries	4	The Parliamentary Monitoring Group (2020), Department of Transport (2017), Molemane (2020), Botha (2019),
<b>Theme 3</b>	Improved taxation and registration of ships	5	Nyandu (2020), Guido (2016), Yin (2020), South African Revenue Service (SARS) (2020), (Surian, 2020)
<b>Theme 4</b>	Bareboat registration	9	Potgieter (2018), Nicci (2019), SAMSA (2016; 2017;2021), Simpson, Havenga, Witthöft and Aritua (2020:151), South African Government (2020), Mabiletsa (2016)
<b>Theme 5</b>	Ship registry remains unattractive to foreign shipowners	7	Potgieter (2018), UNCTAD (2019), Otto (2019). Findlay (2018), Department of Transport (2020), Engel, Macamo and Schubert (2018), Reuther and du Toit (2018)
<b>Research Question 2 - How the cabotage regime will encourage the growth and development of the South African ship register</b>			<b>Citations</b>
<b>Theme 1</b>	Protectionist (strict) cabotage regime guarantees safeguard and defence to development of all national maritime industries, strong state economy, prevents dependency on foreign ships and firms, provides citizens labour and business opportunities.	6	Nwokedi, Addah, Nnadozie, Friday and Joseph (2018), Esplugues (2018), Onwuegbuchunam, Aponjolosun, Oludare, & Onyekachi, (2020), Ruppel and Biam's (2016), Agama and Alisigwe (2018)
<b>Theme 2</b>	The liberal cabotage regime allows open participation, increased competitiveness	6	Akpan (2016), Brooks and Wilmsmeier (2017), Wong, Wong, Mo, & Leung's (2019:464), Laribi and Guy (2018), Casaca, Yip, Lee and Goulielmos (2017), Lu (2019)
<b>Research Question 3 - Measures the South African government can take to implement and regulate cabotage to encourage growth of the</b>			<b>Citations</b>

<b>ship registry in South Africa</b>			
<b>Theme 1</b>	Increased funding	2	(SAMSA, 2019; 2020),
<b>Theme 2</b>	Stakeholder Collaborations, law and policy alignment	3	Nyabadza (2016), UNCTAD (2017), National Heritage Council (2020)
<b>Theme 3</b>	Enact and/or revise South Africa's maritime laws	6	Taljaard, Van Niekerk and Weerts (2019), Mizukoshi, Watanabe and Ouchi's (2019), Havenga, Simpson and Goedhals-Gerber (2017), Potgieter (2018), SAMSA (2018), Vreÿ, Nel, Fouché and Blaine (2019)
<b>Theme 4</b>	Political stability, standardise training and increased research	6	Chirwa et al.'s (2020), Ruggunan (2016), (UNCTAD, 2017), Gerald, Ndikom, Tochi, Henry and Nwokedi (2019:931), Funke, Claassen, Nortje and Meissner (2016), Biam and Ruppel (2016)
<b>Research Question 4 - How South Africa can implement and regulate cabotage in comparison to its trade partners China and India</b>			<b>Citations</b>
<b>Theme 1</b>	Collectively examine and apply cabotage policies	7	Wong, Wong, Mo, and Leung (2019), Agarwal (2020), UNCTAD Stats (2019), Deepak (2016), Vreÿ (2019), UNCTAD (2017), Papadimitriou, Lyridis, Koliouisis, Tsioumas, Sdoukopoulos and Stavroulakis (2018)
<b>Theme 2</b>	Avoid barring foreign-flagged ships from coast trade operating	3	Norton's (2017), Franchi (2019), Casaca and Lyridis (2018)
<b>Theme 3</b>	Relax or ease cabotage laws	4	Geoghegan and Lam (2018), Casaca and Lyridis (2018), The Hindu (2018), Lloyd et al. (2019)
<b>Theme 4</b>	Protect local ship owners	4	Mathew (2019), Bency (2019), Akpan's (2018), Biam and Ruppel (2016)
<b>Theme 5</b>	Revise tax laws and regulations	3	Brooks and Farrell (2019), Okon and

			Edem (2019), Surian (2020)
<b>Theme 6</b>	Significantly invest in coastal shipping	4	Geoghegan and Lam (2018), Dasgupta and Thakurta, (2018), Manoj (2020), Casaca, Yip, Lee and Goulielmos (2017)
<b>Theme 7</b>	Encourage research, education, and training on sustainability	2	Dasgupta and Thakurta (2018), Claassen, Zagalo-Pereira, Soares-Cordeiro, Funke and Nortje (2019)

#### 4.2.1 Current Status of South Africa's ship register

##### **Theme 1: Familiarity with laws and centralisation of South Africa's ship register**

Ruppel and Biam's (2016:28) study on African cabotage finds that South Africans are now familiar with the Ship Registration Act, No. 58 (Act No. 58 of 1998) as well as its efficient centralisation of the office of the Registrar of Ships to benefit extended sea communities. In South Africa, the 1998 Ship Registration Act, No. 58 (Act No. 58 of 1998) permits South Africans to register and fly the flag of South Africa on their ships (SAMSA, 2020). Findlay (2018) states that the Act No. 58 of 1998 pre-dates Operation Phakisa for over ten years. Operation Phakisa was launched in 2015 in line with the National Development Plan 2030, to promote economic growth and boost job creations and the growth of the ship registry was one of its priorities. Regardless of South Africa enacting the law in the year 1998, it took another six (6) years for the nation to promulgate the Act due to the complex procedure of drafting comprehensive guidelines for the diverse groups of merchant ships as well as pleasure crafts (South African Government, 2020). However, South Africans remain ignorance of the structures that the Act No. 58 of 1998 has created as well as the benefits, compared to the moderately limited provisions on ship registration in the Merchant Shipping Act No. 57 of 1951.

##### **Theme 2: Alignment of ship register with leading maritime laws and countries**

The Parliamentary Monitoring Group, (2020) indicates that for the first time, South Africa has aligned its ship registration model with leading maritime laws and countries, like United Kingdom. According to the Department of Transport (2017), the alignment and centralisation has allowed the Department of Transport to manage and overcome all previous shortcomings of the Merchant Shipping Act No. 57 of 1951, including the discretion to register mortgages over a ship under twenty-five (25) tons. Molemane (2020) also states that the department can now consistently apply discretion against the mortgage registration of small yet very high-value vessels, like luxury yachts. Botha's (2019) study finds that while promulgating the 1998 Ship Registration Act has removed the frustrating faults, the

key issue that the alignment, South Africa's Department of Transport and SAMSA are resolving is the permission or not of the bareboat chartered ships to be registered in South African ship registry. The adopted policy and Alignment is intended to permit foreign-registered ships to become bareboat chartered to South African nationals, as the Act defines.

### **Theme 3: Improved taxation and registration of ships**

Nyandu's (2020:50) study concludes that the 1998 Ship Registration Act has streamlined and improved registration of ships with continued registration of government-owned ships, that is, compliance and research, pleasure craft and fishing vessels. Guido (2016) states that there is still a prevalence of non-registration of large cargo ship in the country, sixteen years after promulgation. The industry and government have had continuous deliberations in the background on the needed models of taxation to attract the merchant capacity onto South Africa's register. According to Yin (2020:713), the initiatives are a result of the tonnage taxation regimes of Netherlands, United Kingdom and such other maritime countries. Locally, the final decision was not to introduce any tax relief based on a tonnage tax model, but rather to exclude local shipping firms from nearly all forms of taxation; a decision that other industries are no doubt envious of. The South African Revenue Service (SARS) (2020) indicates that the 2013 Taxation Laws Amendment Act No. 31's amendment of the 1962 Income Tax Act No. 58, section 12 (Q) formed exemptions from the normal tax, capital losses or gains, withholding and dividend taxes in respect of global shipping revenue.

South Africa's ship register has issues with how Treasury officials treat the varied tax range as well as other financial arrangements of South Africa's bareboat charterer. While this challenge takes some time to settle, South Africa's bareboat charterers intending to avail themselves of the chance to register ships under the 1998 Ship Registration Act must consider SAMSA negotiations in regard to service of South Africa's seafarers. The practice may need some phased method over a defined period. There is a need to extend Act No. 58 of 1998 application to benefit maritime community sectors that currently are not catered for in the 2013 Taxation Laws Amendment Act No. 31. This study suggests that there is a need to effectively follow registrations under the Act's provisions on bareboat registration. Globally, shipping businesses and nations have realised that effective ship registration can only occur if there are strong financial benefits. Nations have to therefore adopt particular forms of cabotage to resolve the high business losses arising out of failed or ineffective ship registration.

Tax regulations have made it hard for ships to fly the flag of South Africa because they often change, and ship owners are burdened with the tonnage tax charged as per ship size and not according to the volume of cargo being moved. Although it is changing, South Africa's claims rankings in the Admiralty Jurisdiction Regulations Act (AJRA) give other creditors preferences above any holders of

mortgage (banks herein). In shipping, when a shipowner lends money from a financial institution that shipowner gives the lender (mortgagee) an interest in a ship as security towards the loan. The use of ship mortgages is a widely accepted financing practise in the shipping business. Currently, mortgage claims are ranked after any claims raised by the loss of person or property caused by that ship, any port dues or fines imposed by SAMSA, claims raised by service providers in terms of ship repairs, ship chandlers or suppliers, salvage and wreck removals and premiums of marine insurance. This current set up makes it unattractive for financial institutions to provide the much-needed financial support for purchasing ships as the risk of loss is too high. Having a ship crewed only by South Africans is similarly difficult because of the shortage of qualified seafarers and that the South African National Cadet Programme (NCP) has not yet produced senior ship officers for purposes of the merchant navy (Surian, 2020).

#### **Theme 4: Bareboat registration**

Potgieter (2018:49) states that due to the centralisation and alignment, any South African body corporate or citizen can now register their ship on the state flag if established in terms of South Africa's regulation on business place. This is because bareboating of ships in South Africa is not formally covered in the 1998 Ship Registration Act. Such lack of recognition by the global maritime community is a growing concern with Act No. 58 of 1998 because it generates a double flag. Nicci (2019) states that nonetheless, the Act No. 58 of 1998 never precludes or prohibits a ship registered in South Africa's flag to enter into a bareboat charter. In terms of registration of foreign ships, the 2004 promulgation of Act No. 58 of 1998 offers a valuable mechanism whereby foreign-owned ships funded by the foreign banking institutions, bareboat chartered to South African nationals can be registered on the South African registry as South African-owned ships. SAMSA (2016; 2017) finds that to date, South Africa has on its register five ships, Cape Acacia; Cape Enterprise; Lefkas; Greatship Manisha and Windsor Adventure, whereby the Lefkas is operated by Aegean Bunkering Marine Services and Greatship Manisha is operated by Marine Crew Services (MCS). The Cape Acacia, Cape Enterprise and Windsor Adventure are owned and operated by Vuka Marine, a joint venture between a South African company, Via Maritime, and a Japanese company, K-Line (SAMSA, 2021).

Simpson, Havenga, Witthöft and Aritua's (2020:151) study indicates that in 2015, South Africa introduced the leading bareboat registration under the Act No. 58 of 1998, induced by fiscal relief measures and/or such other moneymaking factors. A shipping company in South Africa can now enter into a bareboat charter with foreign ship owners, enabling Cape-size bulk ships to be bareboat chartered for a fixed time. Today, Act No. 58 of 1998 provides that bareboat charters "in relation to ships," means the ship charter for some fixed time and terms, gives the charterer the ship's control and possession, including the authority to appoint crew and its master (South African Government,

2020). Section 16(c) of the Act No. 58 of 1998 states that a ship on the bareboat charter to nationals of South Africa has the right of registration on South Africa's Ships Register. A bareboat charterer must be a South African, or a corporate body established under South African law with a business place in South Africa to qualify as a national of South Africa (South African Government, 2020). Mabiletsa's (2016:3) study concludes that SAMSA has risen to the challenge and affected registrations. While the Act No. 58 of 1998 does not essentially cover all the steps to achieve the bareboat registration, they frequently occur in the general flags globally. South Africa can, therefore, seek guidance on bareboat registration from primary flags under which a ship is registered.

The International practices are that, for there to be a domestic bareboat registration according to the national laws, a ship is temporarily deferred from primary registration for the period of the demise charter, (Linh, 2020:29). However, the good relations between officials of the corresponding registries have permitted flag administrations to practically exchanged and issued numerous temporary deletions and succeeding certificates of permanent deletion. A deferment means no issuance of additional credit checks, mainly on high-value ships while deletion means removing a ship from the ship register (Mthuli, Nzimakwe, Biyela & Khambule, 2018:85). Myers (2017:195) state that one area that South African register has to sensitively handle is the situation where a majority of huge global ship operators and owners have reached fleet or group mortgages with the ship funding banks or financial organisations that need assurances that any ship registrations in foreign jurisdictions under a bareboat arrangement registration will not prejudice the rights of the bank under such a mortgage in any way. International ship-owners followed keenly the practice of first registration and remain involved in research and considerations of placing ships on South Africa's Register under the 1998 Ship Registration Act's bareboat laws (Hartwell, 2017:18).

#### **Theme 4: South Africa's ship registry remains unattractive to foreign shipowners**

Potgieter (2018:51) state that South Africa's ship registry is unattractive to foreign shipowners because for its admiralty legislation, South Africa runs an "associated ship"<sup>6</sup> arrangement which permits the arresting of ships owned by same persons or company, even under different business names in South African waters. The global trend in shipping is for shipowners to run a one ship company whereby each ship will have its own registered shipping company. Therefore, the practice at the register makes offshore procurement of the needed funds very difficult. When compared with

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<sup>6</sup> Section 7 (a) of AJRA states: an associated ship means a ship, other than the ship in respect of which the maritime claim arose - (i) owned, at the time when the action is commenced, by the person who was the owner of the ship concerned at the time when the maritime claim arose; or (ii) owned, at the time when the action is commenced, by a person who controlled the company which owned the ship concerned when the maritime claim arose; or; (iii) owned, at the time when the action is commenced, by a company which is controlled by a person who owned the ship concerned, or controlled the company which owned the ship concerned, when the maritime claim arose.

the likely cabotage service, it is now clear the way foreign ships carry local cargo at marginal costs. According to UNCTAD (2019), South Africa shipyards have not built a universal cargo ship below one thousand (1000) TEU that qualifies as a cabotage ship (OACL cabotage ships are about seven hundred (700) TEU). The needed creditor bank facilitation has made it impossible for South Africans to own ships. In addition to this, the South African Company's act requires for a person to disclose all the companies they own thus exposing their ships to the "associated arrest" provision. Otto's (2019:71) study finds that for many years, South Africa continues to battle with attracting ships onto its register.

Findlay (2018:248) and the Department of Transport (2020) reports that as of 2019, SAMSA's local ship register sits at a mere five (5) ships in total yet there are estimations that South Africa is dependent on about 12 000 overseas registered ships annually to transport over ninety-six percent (96%) of the national exports globally. The practice makes Operation Phakisa more essential. Engel, Macamo and Schubert (2018:72) refer to SAMSA's research to conclude that high crew and taxation costs, flag reputation, and state bureaucracies are making it hard for South Africa's ship register to attract ships onto its register. Going into the future, the policymakers in South Africa need to resolve these areas if the nation is to progress its domestic ship registry. Reuther and du Toit, (2018:23) indicate that the register has also failed to keeping up with growth in customer trade, wherein the cabotage has to content the customer needs in terms of passenger movement and freight. There is need for standardizing global cost structures because South Africans have erroneously viewed cabotage as forming part of the holistic production approaches, that is, part of the general transport network of raw materials, end-user consumption as well as converse logistics. Vreÿ, (2019:87) state that the ship register is facing external challenge like prerequisite for means-fundamental innovations in the ship construction, design, ship-terminal scheme and loading technologies, infrastructure improvement, investments and outputs. The is need to standardize the terminals and ships, manning, labour rules and ecological legislation.

It is worth noting in this section that Article 87 of the United Nations Convention for the Law of the Sea (UNCLOS) establishes the freedom of high seas as a fundamental principle in international law. International law provides a shipping regulation framework to balance the need for misuse and disorder avoidance with freedom. The framework is founded on two (2) fundamental rules: a) every nation has to fix the circumstances for granting nationality to the applying ships, ship registration in their territory as well as right to fly the national flag (Article 91); and b) the nation must efficiently exercise control and jurisdiction in technical, social and administrative matters over all ships that fly the national flag (Article 94) (International Maritime Organization, 2019). In Article 91, clause (1), the UNCLOS recognizes the right of each nation to fix the circumstances for granting nationality as well as flying its national flag. The article goes further to maintain that an honest connection has to

exist between the ship and State (United Nations, 2020). In *Guinea M/V Saiga Cases*, 30 *O.D.I.L.* 43 (1999), the International Tribunal on the Law of the Sea (ITLOS) held that securing more efficient application of the flag State's duties in Article 94 of the UNCLOS is the main intention of the honest connection in UNCLOS.

This section establishes that no universally binding framework prevails to govern the process of ship registration. Although the 1986 United Nations Convention on the Conditions of Registration of Ships establishes international requirements for vessel registration in state registries, the references to a genuine connection, registration, the flagging nation's role, management, ownership and accountability, is not effective in the Convention (United Nations Treaty Section, 2020). Every nation must set particular regulations and laws on ship registration. Therefore, it stays a global declaration of vessel purpose and ownership that a ship has to have some honest connection to the flag nation (UNCTAD, 2020). The registering nation's flag becomes the ship's flag upon legal registration. In *Lauritzen v. Larsen*, 345 U.S. 571, the court held that the ship's flag and papers are the only evidence to the world of nationality. An unregistered ship is not permitted to fly a flag of any country as there is no legal connection of that ship and a particular state. An unregistered ship, therefore, does not enjoy any protection or privileges from the registering country other than acknowledgement of the elementary human rights. In contrast to ownership, registration links the ship to a specific nation.

#### **4.2.2 How the cabotage regime will encourage the growth and development of the South African ship register**

**Theme 1: The protectionist (strict) cabotage regime guarantees safeguard and defence, development of all national maritime industries, strong national economy, prevents dependency on foreign ships and firms, provides citizens labour and business opportunities**

Nwokedi, Addah, Nnadozie, Friday and Joseph (2018:653) find that the protectionist (strict) cabotage regime guarantees; a) safeguard and defence to development of all national maritime industries (national defence and security); b) strong state economy; c) prevention of dependency on the foreign ships and companies; as well as d) provision of business and labour opportunities for the citizens. In regard to development and growth, a strict (protectionist) cabotage regime will help South Africa's ship register by its restrictive nature of prohibiting participation of the foreign-flagged ships in the local coastal trade. The requirements of a protectionist regime offer the certainty to the South African ship register by stipulating how local coastal trade is restricted to only the ships built, owned, operated, registered in South Africa and crewed by South African citizens.

Studies by Onwuegbuchunam, Aponjolosun, Oludare, & Onyekachi, (2020:5) as well as Ruppel and Biam's (2016:29) indicate that the protectionist cabotage regime helps South Africa's ship register avoid outside competitions by closing foreign-flagged ships out of South Africa's coastal waters. Due to its naturally discrimination, a protectionist cabotage regime will help South Africa's ship register grow without competing for the international market share with the flags of convenience and other countries offering closed registries. A protectionist cabotage regime will help South Africa reserve business opportunities for the locals on socioeconomic, political, security and geo-cultural reasons. For the benefit of South Africans and the local shipping sector, a strict cabotage regime will help South Africa to deliberately craft regulations and laws that protect South Africa's local maritime sector from external domination, control or participation.

According to Agama and Alisigwe (2018:78) A protectionist cabotage regime can operate as the national defence instrument against crimes like terrorism. Piracy, terrorism and other maritime crimes are on the rise and with South Africa's gaining traction and growth in the exploration and exploitation of the EEZ, it will be prone to such crimes. South Africa's Merchant Shipping Act 57 of 1951 permits the South African government to block foreign ships from operating in South African waterways if it suspects acts of terrorism. Esplugues' (2018:439) study finds that a protectionist cabotage regime will empower South Africa to block foreign ships from operating in South African waterways on suspicion of acts of piracy, trafficking, terrorism amongst others. Laribi and Guy (2018:213) state that the South Africa's ship register can, therefore, reap the benefit of an increased number of ships entering on the registry by adopting a strict cabotage regime for national security purposes.

**Theme 2: The liberal cabotage regime permits open participation, increased competitiveness and innovative**

Akpan (2016:229) study concludes that a liberalized cabotage regime comprises the nation granting foreigner participation in ship registration, building or ownership as well as operation in the national maritime sector. In adopting a liberalized cabotage regime, South Africa's ship register will permit certain measures and the participation of foreign-flagged ships in South Africa's coastal trading. Brooks and Wilmsmeier (2017:32) conclude that guidelines of a liberalized cabotage regime back increased competitiveness of maritime industry's financial activities, as well as growing market shares at global, regional and local levels. According to Wong, Wong, Mo, & Leung's (2019:464) study, the liberalized cabotage regime will help South Africa's ship register and maritime industry to offer new ways of operating and low freight rates to foreign-flagged ships because of the capacity of ship operators to engage in international outsourcing of supplies.

Laribi and Guy (2018:213) finds that a liberalized cabotage regime will help South Africa's ship register to focus on environment protection and education, allowing the ship owners and operators to become innovative. A liberalized cabotage regime will permit South Africa's ship register to advocate for technologically-advanced ships from ship operators. The regime will allow the register to require ship operators to have specific naval expertise, competencies and skills as well as preparedness to handle technologies. Casaca, Yip, Lee and Goulielmos (2017:257) concluded that in adopting a liberalized cabotage regime, South Africa will be in a position to offer more opportunities to the maritime schools to appraise their programmes on training, accomplishing market needs as well as engage into the needed research and development (R&D) activities. According to Lu (2019:1), a liberalized cabotage regime and its policies will help the maritime industry to have better relations with the different transport modes, a better alignment and integration of road and sea modes., a liberalized cabotage regime will enable the maritime industry to support naval logistics, improve port processes, streamline port measures that endorse both the ports' and ships' operational performance.

#### **4.2.3 Measures the South African government can take to implement and regulate cabotage to encourage growth of the ship registry in South Africa**

##### **Theme 1: Increased funding**

One of the leading measures that the South African government can take to implement and regulate cabotage as well as encourage growth of South Africa's ship registry is to provide adequate funding of the South African Maritime Safety Authority (SAMSA). The adoption of any policy or legislation is not as demanding, costly and challenging as the implementation of that policy or legislation. Alignment of the new policy with current policies in place, upskilling of the implementing or enforcement personnel, infrastructure development and/or rehabilitation and acquisition of facilities are all capital intensive. SAMSA is the implementing agency, on behalf of DoT, of National and International Maritime regulations within South Africa. It is charged with three legislative mandates to ensure safety of life and property at sea, preventing and combating pollution from ships in the marine environment and promoting the republic's maritime interest (SAMSA, 2020). Inadequate funding of SAMSA has resulted in the institution's inability to effectively and efficiently administer legislation and hold accountable any transgressors of the said legislation in South African waters. Additional funding of SAMSA will help in the employment and training of personnel, acquisition of advanced facilities, and proactive discharge of statutory mandate especially the third mandate of promoting the republic's maritime interest (SAMSA, 2019). Nyabadza (2016:1) state that efforts to grow the ship registry is a strategic objective for SAMSA and with proper funding, inter-departmental collaborations and proper policy and legislation alignments will empower SAMSA to achieve this strategy.

Walker (2018:3) insists that to bolster and encourage cabotage in South Africa, the South African government needs to adequately fund or make accessible funds to domestic ship operators. The South African government needs to accelerate fund accessibility and availability if it is to have more engagement of local ship firms in coastal trade. To complement the efforts above and fund cabotage, the South African government needs to form a maritime development bank, specialised in funding local ship procurement, dry dockyard and shipyard development as well as other various maritime projects. Establishing a maritime development bank will decrease issues of high interests and insufficient funds in cabotage implementation. Funding for shipbuilding, acquisition and registration requires government and financial institution guarantees on loan facilitation. Therefore, it is incumbent on South Africa's government to give guarantees for funds. The South African government needs to fund exploration of minerals needed for dry dockyards and shipyards like iron ore and steel. The South African government has to revive both federal and state suppliers of raw materials required for dry dockyards and shipyards. Blaine and Nel (2019:107) find that the South African government needs to construct ship repair facilities as a measure of developing shipping infrastructure, and realisation of cabotage objectives. the facilities can be used in the maintenance of several ships in oil and gas, offshore drilling and backup and the huge LNG carriers. Besides galvanising local ship operators to participate in cabotage, an introduction of ship repair and maintenance facilities in South Africa shall trigger the participation of the private sector in ship ownership, registration and building. Clearly, the development of ship financing in countries like China and India is a result of financial institutions, including commercial banks playing a fundamental role in the building, acquisition and registration of the ship (Findlay & Bohler-Muller, 2018:231). International financial institutions as well as dedicated shipping financial institutions can fund the projects where South Africa's local financial institutions cannot completely finance the shipbuilding, acquisition and registration.

## **Theme 2: Stakeholder Collaborations, law and policy alignment**

Nurturing collaborations between local content policy and a cabotage regime is the other measure the South African government can take to implement and regulate cabotage as well as encourage growth of South Africa's ship registry. The United Nations Conference on Trade and Development (UNCTAD) (2017) recommends integration and collaboration of operations, programmes, activities and policies since both share a mutual objective. SAMSA and the National Heritage Council (2020) indicate there is need for SAMSA and relevant organisations like South Africa's national heritage council to work together in the monitoring of policy implementation, research and development, as well as facilitating local maritime operators. Besides, SAMSA has to repeatedly collaborate with the rest of the state and private institutions in inspiring potential local ship owners to participate in cabotage. The South African government can achieve the objectives by the inclusion of stakeholder consultation in the cabotage laws and policies, once established, before granting of waivers to foreign-

owned ships. This way, the South African government must grant waivers on a case-by-case basis, produced by South Africa's communal interest.

### **Theme 3: Enact or revise South Africa's maritime laws and policies**

Taljaard, Van Niekerk and Weerts (2019:6) insist that effective application of laws is a key challenge in the marine sectors due to capacity limitations. In order to establish a result-oriented and vibrant cabotage policy in South Africa, the South African government needs to amend its maritime Acts and policies to portray the honest ambitions of local ship operators and aspiring ship owners in need of policy protection, encouragement, and support. Mizukoshi, Watanabe and Ouchi's (2019:19) find that the South African government must expurgate the South African legislative provisions which impose a surcharge on local ship operators. The domestic shipping companies need technology transfers as well as safeguards from all conditions for foreign ship operator and waivers. Havenga, Simpson and Goedhals-Gerber (2017:263) state that to achieve a sustained and coordinated transport system, the South African government needs to perceive cabotage as an idea that needs an institutional set-up, standards, facilitation as well as port-exact measures.

Potgieter (2018:65) contends that the South African government should refrain from assuming that coastal trade is complementary to other modes of transportation and instead embrace its challenges with the intention of achieving an integrated transport system. Above all, there is a need for the South African government to fully and properly implement the cabotage policy, actualise the aims of coastal waterways transport. According to SAMSA (2018), The South African government must introduce policies which stimulate financial institutions into providing guarantees to ship financing in the nation. The South African government needs to ensure all cabotage instruments are transparent and self-sustained if it is to implement and regulate cabotage and encourage the growth of its ship registry. Vreÿ, Nel, Fouché and Blaine (2019:127) find that there is a need for related premiums to reflect the risks, instrument operations have to be predictable and clear while the actions have to strictly comply with prevailing laws and rules.

### **Theme 4: Political stability, standardise training and increased research**

Chirwa et al.'s (2020:51) study finds that there is need to introduce and standardise all training curricula on shipbuilding, acquisition, registration development and repair of ships. The South Africa government needs to introduce policies which encourage the formation of training curricula on shipbuilding, acquisition and registration in the maritime institutions and sufficiently fund the programmes. Ruggunan (2016) states that the other measures the South African government can take to implement and regulate cabotage to encourage growth of its ship registry is encourage financial institutions to train ship finance personnel, particularly on credit risk assessment, the capability of a shipowner to accomplish financial responsibilities, even in hostile conditions. Ship purchase, sale and

registration are very technical transactions in need of adequate and proper training to handle the whole process. The United Nations Conference on Trade and Development states that in order for the South African government to implement and regulate cabotage as well as encourage the growth of the ship registry in South Africa government must similarly embark on the development of infrastructure, like coastal water dredging, equipping all current ports with up-to-date facilities, as well as enhance the prevailing dry dockyards and shipyards (UNCTAD, 2017:23).

According to Gerald, Ndikom, Tochi, Henry and Nwokedi (2019:931), the South African government needs to put high priority on research and development (R&D) in shipbuilding, acquisition and registration as well as upgrading of existing shipyards just like Nigeria. Funke, Claassen, Nortje and Meissner (2016:11) conducted a research, innovation and knowledge management road map for the South African maritime sector to suggest that the government must ensure economic and socio-political stability in South Africa if the nation is to run an effective ship register, implement the cabotage policy, foster and attract foreign investment in ship acquisition, building and registration. Biam and Ruppel's (2016:20) study recommends the government must introduce monetary policies and tax incentives for local companies engaged in production, exploration and extraction of shipbuilding raw materials. Not only will the policies and tax incentives create employment for South Africans, but it will immensely cause the realisation of cabotage objectives like the local content policy.

#### **4.2.4 How South Africa can implement and regulate cabotage in comparison to its trade partners China and India**

##### **Theme 1: Collectively examine and apply cabotage policies**

Wong, Wong, Mo, and Leung (2019:481) states that It is vital for governments to collectively examine their cabotage policies because the extent to which a strict cabotage regime can be adopted and implement is dependent on the nation's strategic goals. Agarwal (2020) maintains that both India and China are serious trading partners of South Africa in Asia. China and India's trade relationship with South Africa has prevailed way before the culmination of BRICS. According to UNCTAD Stats (2019), an assessment of ship registries of the BRICS members indicates that China ranks first with 6076 ships totalling 98242000 DWT while India ranks third with 1737 ships on its registry, that is 17417000 DWT. Deepak (2016) indicates that Brazil, Russia, India, China and South Africa have joined forces in order to become stronger - both politically and economically - in order to compete with more developed countries.

Vreÿ (2019) asserts that a consideration of China and India indicates that South Africa must collectively implement and regulate cabotage by adopting protectionist (strict) cabotage legislations and policies on trade or commercial codes in its cargo reservation schemes as well as within the scope

of laws governing sea transport activities. UNCTAD (2017) reports that the reason is that these are critical shipping areas or operations in South Africa's marine sector. China and India are the perceived leaders of the maritime domain of BRICS which includes the South America, South Asia, East Asia, Eastern Europe, and the Arctic, as well as Southern Africa. China and India are the perceived leaders of the maritime domain of BRICS which includes the South America, South Asia, East Asia, Eastern Europe, and the Arctic, as well as Southern Africa. Papadimitriou, Lyridis, Koliouis, Tsioumas, Sdoukopoulos and Stavroulakis, (2018: 163) finds that South Africa can implement China's strict cabotage policies to make sure South Africans control at-the-least fifty-one percent (51%) shares of the shipping firms and/or that South Africans own fifty-one percent (51%) shares of the ship so that ships purchased by the businesses belong to South African fleet. In adopting china's cabotage regime, South African companies perform repairs and Shipbuilding, and register their ships under South Africa's flag, and partially or totally crewed by South Africans.

### **Theme 2: Avoid baring foreign-flagged ships from coast trade operating**

Norton's (2017) study recommends that South Africa can regulate and implement cabotage by not expressly baring foreign-flagged ships from operating in its coasting trading. Adopting a strict cabotage policy in South Africa means foreign-flagged ships must register and attain licences from SAMSA (the DGS in India) to engage in South Africa's coasting trade. SAMSA can only grant the licence if no South African ship is available for such an operation or purpose. SAMSA can grant a general licence, a part or whole coasting trading licence for a single voyage or specified period licence. Licencing needs to be subject to SAMSA terms and conditions, circulars, provisions and the public notices that SAMSA periodically issues.

South Africa's government needs to at some point, adopt China's strict cabotage strategies with partially relaxed provisions in some cabotage market segments in order to revive local shipping firms and avoid bottlenecks which may affect national growth. Franchi (2019:391) states that to foster and enable container movement China partially relaxed its cabotage policy, mainly in the scope of container ship markets. Today, the Chinese government permits the same provision in some of its ports to ease all cabotage trading. Casaca and Lyridis (2018:210) conclude that the adoption of such integrated cabotage policies (partially strict, partially liberal cabotage regimes) can, therefore, help South Africa support economic activity competitiveness and result in growing market share in the coastal trade.

### **Theme 3: Relax or ease cabotage laws**

Geoghegan and Lam (2018) conducted a quick overview of maritime cabotage regimes and find that easing of cabotage laws in China to permit foreign empty containers and ships between coastal ports has attracted more business for China ports as the central hub for any container traffic The relaxation

results in foreign shipping companies entering the national market to provide competition to the resident feeder-workers, and in so doing reduce shipping rates. Today, China's strict cabotage regime and policies focus on economy, strategy, operations, environment, marketing and education shows connections to national economy and the vessel's economy. Casaca and Lyridis (2018:214) believes that China's strict cabotage regime and policies also support competitiveness amongst economic practices and activities to cause an increase in market share at all national, regional and international levels. From the economy of the vessel's perspective, China's relaxation of its strict cabotage regime and policies has resulted in discovery of new approaches to operation, which cause low rates of freight since the operators of ship are capable of globally outsourcing supplies.

The Hindu (2018) reports that since 2005, both China and India provisionally relaxed their cabotage regimes to permit trans-shipment and feeder services at their coastal ports. The relaxation has seen the privately-run ports gain more of the profits than the publicly-managed ports. Lloyd et al.'s (2019:20) study maintains that privately run ports enjoy unregulated charges and better infrastructure while the government-run major ship ports remain handicapped by reasonably low competence and efficiency as well as tariff policies and regulations. Accordingly, South Africa must relax its current from cabotage regime to allow efficient and effective companies survive in its cabotage regime and policies.

#### **Theme 4: Protect local ship owners**

Mathew (2019) states that while India has begun efforts to move away from the current protectionist (strict) cabotage regime and policies, there is a continuing controversy about the competitive impact of India cabotage reforms on supply chains. A consideration of India's liberalized cabotage regime indicates that South Africa must learn from arguments by the owners of Indian-flagged tonnage that foreign ship participation in India's cabotage regime provides limited benefits to the cargo owners and the country as a whole. In Container Shipping Lines Association's (CSLA) latest filings to India's Ministry of Shipping, this local body of the foreign-flagged ships operating in India indicates that the move to liberalized maritime environments is resulting in member acceleration of coastal operations, conversion of more import-export containers to direct ships from the existing foreign trans-shipment. Indian ports are registering increments in local trans-shipment handling from the earlier 107598 to 108552 twenty-foot equivalent unit (TEU). According to the CSLA, the absence of cabotage regulations has resulted in shippers falling to depend on the feeder-backed foreign trans-shipment for movement of containers. Foreign ships are progressively using India's free and open coastal markets to repositioning an often complex and costly logistics concern for them. The reason is there has not been any downward adjustment in freight rates for the export-import freight. Bency (2019) finds that the Indian National Shipowners Association (INSA) advocates for a review of India's amended cabotage policies which unfairly hurt growth of Indian tonnage.

Therefore, South African needs to understand that while the Indian government has focused on simplification or liberalizing its cabotage regime and coastal shipping industry, there has been less focus on protecting the concerns of prevailing local players. Akpan's (2018:12) study concluded that the concerns include the local ship-owners and port trusts that cannot in any way relate with the view of their government that such relaxation of cabotage regime helps their shipping industry. The local stakeholders are accusing the Indian government of giving into foreign pressures, risking the foreign-flag ships driving to losses of the Indian ship owners. According to Biam and Ruppel (2016:20), there is need for the South African government to consider directing import shipping on free on board (FOB) modes as well as CIF export shipments in order to inspire the modal cargo shift. The modal cargo shift helps increase competitiveness of the nation's shipping industry and the locals' coastal trading share. Regardless of the cabotage regime adopted by South Africa, it is effective regulation that causes increase in flag ships and attracts foreign direct investment into the nation's shipping industry.

#### **Theme 5: Revise tax laws and regulations**

Brooks and Farrell's (2019:405) study finds that in adopting India's strict cabotage regime, the South African Government must revise its tax laws to exempt South African-owned and South African-flagged ships from paying corporate tax. This will encourage participation South Africans to participate in the coastal shipping trade and additionally it removes barriers of entry into the industry. The benefits to the national economy are manifold compared to government's current revenue losses. In adopting a strict cabotage regime, the South African government must annually relinquish revenues and expect rise in operations of export-import cargo handling that will cause huge indirect and direct profits. Okon and Edem (2019: 388) states that the current coastal cargo of South Africa comprises mainly of oil lubricants, iron ore, petrol, pallets, fertilizers and coal amongst others, resources that are primarily for Public Sector use and undertakings. Adopting an integrated (hybrid) cabotage regime as well as effective regulation will cause potential for better cargo like finished and industrial products, food grains, and fertilizers. An integrated (hybrid) cabotage regime will increase the market scope for South Africa's coastal shipping in the global feeder processes and also protect local ship owners that want to venture in international business. Surian's (2020) study found that integrated (hybrid) cabotage regimes substantially decrease cost of logistics and increase competitiveness in trade.

#### **Theme 6: Significantly invest in coastal shipping**

Geoghegan and Lam (2018) find that there is need for South Africa purpose to invest greatly in their coastal shipping as well as strengthen substructure for the inland cargo transport. Only a few nations have adopted liberal cabotage regime and polices. Almost all the countries in the world have protectionist cabotage laws that substantially safeguard their national ships. Dasgupta and Thakurta,

(2018) indicate that China and India do not permit coastal trading by ships except if owned, manned and built by nationals. Just like China and India, foreign ship owners in South Africa must not have the advantage of tax and cabotage legislations. According to Manoj (2020), the bigger challenge for South Africa in choosing China or India's cabotage regimes is how the nation compensates the local ship owners to guarantee that they do not have uneven playing fields. Casaca, Yip, Lee and Goulielmos (2017:257) finds that protectionist cabotage laws are aimed at safeguarding the national economy and bridging the gap between domestic maritime interests and unfair international competition in the nation's maritime industry. South Africa needs to sufficiently equip itself in terms of people capacity and means to facilitate more participation of local ship owners to conduct coastal maritime trade regardless of foreign help. The practice helps in building a viable maritime industry, creates employment opportunities for the locals and results in a viable national economy.

### **Theme 7: Encourage research, education, and training on sustainability**

Dasgupta and Thakurta (2018) state that for South Africa, educating nationals is an opening to realize the needs of the market, match all training programmes with international trends, and even engage in continuous research and development (R&D) activities. Notwithstanding all conservational pressures of the maritime industry like lowering the gas emission percentages, India's cabotage regimes will help South African ships to remain ecologically friendly. Claassen, Zagalo-Pereira, Soares-Cordeiro, Funke and Nortje (2019:2) insist that both India and China's cabotage regimes are predominantly relevant to South Africa's efforts to implement and regulate cabotage. For instance, China's strict cabotage policies permit operators of the ships to become innovative by operating more technologically-advanced ship units. South Africa needs to focus on building specific local nautical expertise, mainly, exceedingly qualified workers who possess naval architectural competencies and skills which are very hard to reproduce and prepared to operate with technologies.

According to the literature herein, India is South Africa's fifth-largest export destination because it is ranked 4<sup>th</sup> in terms of imports into South Africa (Agarwal, 2020). Mishra (2019) postulates that the Indian Community constitutes three per cent of the South African population, making South Africa home to the highest number of Indian Diaspora in the African continent. In India, the 2016 Merchant Shipping Bill regulates cabotage, replacing both the Coasting Vessels Act of 1838 as well as the Merchant Shipping Act of 1958 (Ministry of Shipping, 2020). There are two kinds of ships permitted to partake in India's coasting trade a) only the Indian flagged ships and/or b) ship flagged outside but operating through a license issued by DGS (Director-General of Shipping). Section 406 to 407 of the 1958 Merchant Shipping Act indicate that it is only the Indian flagged ships that people and companies can use in Indian cabotage trading (Krishnamurthy et al., 2020). Coasting Trading comprises of product or passenger carriage from an Indian place or port to another Sri Lanka or India place or port. The Merchant Shipping Act of 2016 has however widened cabotage's scope to consist

of activities or services performed in India's territorial continental shelf, water, exclusive financial zones as well as other naval zones. Ships registered in India have instant access to cabotage trading without any licence applications (Soami, 2019). The Director-General grants all licencing regimes that apply to all foreign ships and comprehend three licence types. Cabotage ships remain exempted from presenting statutory certificates and/or trading licences to attain port clearances (Mooney, 2016:12).

South Africa is considered to be the biggest trading partner of China in the African Continent and China is ranked number one of the top five of South Africa's Trade partners. In 2019 South Africa's trade data analysis showed that South Africa imported USD 16,289 million worth of goods from China whilst USD 9,659 million worth of goods were exported to China (Export genius, 2021). In China, Article 4 of The Maritime Code of China (CMC), Article 24 of the 2016 Regulations on International Maritime Transportation and Article 2 of the Regulations on the Administration of Domestic Water Transport state that China does not permit foreign-flagged ships to undertake local transshipments or transport except with the Ministry of Transport (MOT)'s preceding approval (Fendos, Koo & Lee, 2016:715). China's position is that product or good carriage in China's territory is exclusively held as local transport and only undertaken by the Chinese ships (Whelan, 2016). The right authorities must grant foreign ships permission and entry to China's cabotage market (Park & Medda, 2016:3). Besides, authorities in China must permit foreign businesses to venture into the China-foreign contractual or equity joint ventures. the Ministry of Commerce China (2020) and the State Council (2020) indicate that the proportion of investment is limited to forty-nine percent (49%).

While the real relaxation occurred only in 2014, the Government of China decided in 2013 to slowly relax their cabotage regime and allow foreign-flagged ships owned by Chinese nationals to carry containers on trading routes between the Shanghai Free Trade Zone and other Chinese coastal ports (Lu, 2019:1). From the year 2015, China conducted additional cabotage changes to put Chinese cabotage in a period of transition, making unknown the extent of such Chinese cabotage relaxations (Yan, 2015). China's cabotage strategies supports marine logistics and enhanced port operations. The strategies also streamline port measures that encourage both port operational performance, ship registration, building and procurement. In pursuit of developing and growing the South African merchant fleet, the adoption of China's strict cabotage regime will be work.

### **4.3 CHAPTER SUMMARY**

In this chapter a review of the legislative framework governing ship registration in South Africa. It was seen that the Ship registration Act and the Income Tax Act, in their original form impeded the possibility of having foreign-owned ships registered in South Africa. However, efforts have been made to amend the legislation and this is seen in the acceptance of the foreign-owned ships, that are

bareboat chartered to South Africans or South African company, to be registered in South Africa. Additionally, the government exempted all ships registered in South Africa from any income tax. An analysis of maritime cabotage in South Africa highlighted the need for policy to govern the coastal trade and the Comprehensive Maritime Transport Policy provides the relevant legal framework to develop and enact a cabotage regime in South Africa. Further measures that the South African government needs to take in adopting and regulating cabotage with efforts to grow the ship registry include adequate funding of the maritime industry to support aspiring ship owners, rehabilitate the ship building and ship repair facilities and SAMSA as the implementing authority. The review of China and India's cabotage regime indicate that both countries have embraced the strict and liberal cabotage regimes respectively. Additionally, China and India demonstrate that cabotage regime implementation occurs at very different speeds because of particular national interests. This review has proved that the strict cabotage regime is supportive of the nation's intentions to grow its fleet. It is therefore crucial for South Africa to appreciate that the strict regime can be adopted and implemented selectively taking into consideration the capital required to overcome the stated challenges faced by the maritime industry.

## **CHAPTER FIVE: CONCLUSION**

### **5.1 INTRODUCTION**

This chapter covers the summary, and conclusion on the potential use of cabotage as a means of developing the South African merchant fleet. The chapter also provides recommendations and areas for further research.

### **5.2 SUMMARY OF THE STUDY**

The objectives of the study were to explore the adoption of a cabotage regime to encourage the growth of the South African ship registry and to assess the mitigation of maritime-related legislation to accommodate the implementation of cabotage for fleet growth purposes. The study, therefore, raised the questions; what is the current status of South Africa's ship registry; how a cabotage regime will encourage the growth and development of the South Africa ship register; the measures government can take to implement cabotage to encourage the growth of the ship registry in South Africa; and how South Africa can implement and regulate cabotage in comparison to its trade partners China and India.

The study used the qualitative methodology of research to explore cabotage as a means of developing the South African merchant fleet. The reasons for adopting the qualitative methodology of research include its focus on exploring, determining and expounding values, experiences, attitude, observations, state of affairs, beliefs and moods. The study conducted a desktop research approach to data collection on India and China to appreciate their implementation and adoption of cabotage as well as ways cabotage can influence the number of ships on the registry. For the analysis of all the collected data, this study used qualitative content analysis to identify the meanings, concepts and patterns regarding cabotage adoption and ship register in South Africa.

### **5.3 CONCLUSIONS**

#### **5.3.1 Current Status of South Africa's ship register**

South Africa has five ships on its registry, Cape Acacia; Cape Enterprise; Windsor Adventure; Lefkas and Greatship Manisha which are either owned by a South African Company in a joint-venture with foreign companies or bareboat chartered to a South African Company. Despite the several efforts made under the Operation Phakisa flagship with regards to tax exemptions and the promulgation of the Ship Registration Act to attract ship owners to register their ships in South Africa, the study found that there is still no significant rise in the number of ships on the South African ship register. The current status of South African Ship register reveals that South Africa is faced with several challenges

that impede its efforts to grow the registry and the ability for South Africans to own ships. These challenges include the South African financial institutions' inability to offer citizens financing required to purchase ships. South Africans who wish to be ship owners are unable to secure offshore funding due to the claims ranking under the Admiralty Jurisdiction Regulations Act (AJRA) whereby creditors of the ship are given preference over mortgagees. Additionally, the provisions of "associated ship" in AJRA which permits for the arresting of a sister ship (even though that ship is owned by the same people under different business names) has made it less attractive for foreign investment and opportunities of joint-ventures with international shipping companies out of fear of being implicated under this provision. By virtue of not having a cabotage regime adopted and enforced, South Africa is considered to have the most liberal regime and thereby the coastal trade is dominated by foreign-flagged ships.

### **5.3.2 How the cabotage regime will encourage the growth and development of the South Africa ship register**

Cabotage is the transportation of cargo and/or passengers from one port along the coast to another port, both ports situated in a similar country. There are two types of cabotage regime discussed here that govern the coastal trade and these are, strict and liberal cabotage regime. Close examination of the strict and liberal cabotage regimes has shown that the adoption of a strict cabotage regime will support the growth of the South African Ship register by limiting participation of foreign-flagged ships in the coastal trade. The strict cabotage regime restricts the coastal trade to ships built, owned, registered, manned and operated in South Africa by South Africans. The study found that the strict cabotage regime will provide South Africa with the advantage of growth in the economic activities and encourage entrepreneurship opportunities, growth in employment opportunities and transformation in the maritime industry as anticipated in both the CMTP and Operation Phakisa. A strict cabotage regime will assist South Africa in remedying the current situation of over-reliance on foreign-owned and foreign-flagged ships in the coastal trade.

### **5.3.3 Measures the South African government can take to implement and regulate cabotage to encourage growth of the ship registry in South Africa**

The study has considered the challenges associated with the adoption and implementation of a policy in order to highlight the measures that the South African government needs to prioritise for a successful start-up, implementation and monitoring of a strict cabotage regime. The study found that funding and policy alignment are the key activities government should focus on to ensure a smooth transition from a foreign dominated coastal trade to a local dominated one with its own national fleet. Strict cabotage requires for ships to be built, owned, registered in South Africa and those ships should be manned and operated by South Africans.

- Adequate funding is the number one measure identified that the South African government should take to support the adoption and implementation of a strict cabotage regime. South Africans are faced with difficulties in accessing financing from the local and foreign financial institutions and the government has allocated insufficient funding to encourage and support aspiring local ship owners and operators to participate in the coastal trade. In order to achieve the aspirations of the CMTP in using cabotage restrictions to transform the coastal market, financial barriers to entry into the market should be eliminated to allow for more participation of South Africans in the coastal trade. The South African government can draw wisdom from Nigeria, in terms of what to and what not to do, when establishing a “fund” which will provide financial support to aspiring local shipowners looking to enter the South African coastal market. In Nigeria, there are provisions of the Cabotage Vessels Finance Fund (CVFF), “the fund”, as contemplated in the Cabotage Act, 2003 of Nigeria. These provisions provide guidelines on the establishment of financing mechanism to assist with the implementation of the Cabotage Act, 2003. The initial start-up of the CVFF was facilitated by government putting aside money and the ongoing maintenance of CVFF should be covered by the registration fees and penalties charged to anyone contravening the Cabotage Act of Nigeria. The CVFF was established to assist the Nigerians with the start-up capital, provide security/surety for the bank issued loans and provide insurance for the cabotage market. It should however be noted that the initial start-up money put aside by the Nigerian government was considered to be too low to facilitate meaningful assistance that the CVFF was intended to offer to the maritime industry. That and the cases of maladministration in Nigeria have exhausted the existence and purpose of the CVFF thus rendering it unsuccessful.

- Strict cabotage requires that the ships in the coastal trade are built, owned and registered in South Africa. To ensure that ships used for cabotage are built in South Africa, financing of new technologically advanced infrastructure and rehabilitation of the existing shipyards should also be prioritised. The current focus of local shipbuilders is on the pleasure crafts, tugs and fishing vessels, these shipbuilders can be provided with the financial support needed to upgrade their facilities and acquire relevant skillset to enable them to expand and include building of cargo ships to be used in the coastal trade. Funding for upskilling is fundamental as the shipping world is now shifting to accommodate the latest trends in design and technology.

- SAMSAs, as the implementing authority, is one of the role players that would benefit from a cabotage fund. This fund will empower the entity with the ability to proactively discharge its statutory mandate, employ and train the needed personnel, procure advanced technological

facilities required to improve its operations. An appropriately resourced entity will be in position to implement, enforce and monitor the requirements of the cabotage laws.

#### **5.3.4 How South Africa can implement and regulate cabotage in comparison to its trade partners China and India**

The study found that the movement of cargo or people in China's territory is exclusively held as local transport and only undertaken by the Chinese owned and flagged ships. The only way foreign ship owners are allowed to participate in the coastal trade is by entering into a China-foreign business venture with the proportion of the investment limited to forty-nine percent (49%) by the foreigner. China has applied the strict (protectionist) policies and strategies to include a) cargo reservation schemes, b) implementation of particular cabotage legislations, c) under the nation's trade or commercial codes, and/or d) within the scope of laws governing sea transport activities. However, in 2013 China partially relaxed its cabotage regime and allowed for the participation of foreign-flagged ships, owned by Chinese nationals, to carry containers on routes between the Shanghai Free Trading Zone and other Chinese coastal ports. The partial relaxation was only limited to containerships in efforts to relieve the bottlenecks caused by the port and customs clearances in China. At the time of completing the study, the partial relaxation of cabotage in China was still in place, however, there were considerations of extending the relaxation to other coastal ports.

In India cabotage is limited to Indian flagged ships and/or foreign-flagged ships operating with a licence issued by the Director-General of Shipping (DGS). India does not expressly barr foreign-flagged ships from operating in its coastal trade. However foreign ship owners have to apply for a licence at the office of the DSG who will only issue the licence on condition that there are no Indian owned and registered ships available and willing to take cabotage contract at the time of the application. India's move towards a fully liberalised cabotage regime provides limited benefits to the cargo owners and the country and the relaxation is perceived to have a negative impact on the supply chain. Due to the relaxation of cabotage, whereby foreign ships are allowed to participate in the coastal trade, there has been a significant increase in conducting coastal trade by the members of the Container Shipping Lines Association's (CSLA), a local body of foreign-flagged ships operating in India. Additionally, the relaxation has caused a rise in the trans-shipment activities conducted by foreign ships along the Indian coast as there are no restrictions on the participation by foreign ships in the coastal trade. The increase in foreign ships transshipments have thereby impacted negatively on the growth of the Indian National fleet due to the increased presence of foreign ships in the coastal trade thereby increasing competition between the local ships and the foreign ships.

In consideration of the cabotage regimes adopted in China and India, South Africa should adopt a strict cabotage regime similar to that of China. The study has shown that the requirements of a strict

cabotage regime are supportive of the country's aspirations of growing the South African ship register. To effectively implement and regulate cabotage, South Africa must look and learn from its trade partners China and India by concentrating on more local shipping expertise. The nation needs to increase its pool of exceptionally competent workers with abilities and skills relevant to coastal trade market at a global standard. There are emerging trends in globally and the maritime industry is also impacted by these trends. Two of the leading trends are climate change and the technological advancement dubbed the fourth industrial revolution (4IR). It is imperative for the South African maritime education training programmes to evolve and keep up with the emerging trends. The need to continuously invest in more R&D activities cannot be overemphasised. The International Maritime Organisation has approved the concept of autonomous ships, some countries like Singapore are using the seamless system in their port whilst other countries are already using drones to conduct surveys. All these technological developments highlight the necessity for upskilling or even acquiring new skills to operate effectively in the global shipping world.

A fully liberalized regime will not be suitable for South Africa and its efforts to grow the national merchant fleet. Though a liberal cabotage regime supports competitiveness and increase efficiency, South Africa should learn from India whereby there was an increase in transshipments conducted by foreign-flagged ships negatively impacting the natives and resulting in a decrease in national fleet. However, in implementing this strict cabotage regime, South Africa should be strategic in its approach and be willing to partially relax some of the requirements by allowing the use of licences similar to the approach used in India until such time that it can meet the requirements of a strict cabotage regime in full. This will minimize disruption to the coastal trade market, and it will ensure that a healthy competitive environment exists between the natives and foreign-flagged ships.

In general, the study concludes that there is still room for the policymakers in South Africa to embark on reforms and investments to remedy any challenges inhibiting South Africans from ship ownership and registration onto the South African ship registry. Investments in logistics systems, customs administrations and ports are important because well-equipped infrastructures are necessary for effective and efficient implementation of cabotage.

#### **5.4 RECOMMENDATIONS OF THE STUDY**

The first recommendation is for the South African government to adopt the strict cabotage regime because it ensures development and safeguard of local marine industries, prevents reliance on foreign businesses and ships, ensures strong national economy and the existence of employment and business opportunities for South Africans. The adoption of a strict cabotage regime shall help the South African government to clearly label the forbidden foreign-flagged ships as well as workers, bringing

certainty in the industry and stipulating reservations of coastal trading only to ships built, owned, operated, crewed and registered in South Africa.

The second recommendation is for South Africa consider an integrated approach to the cabotage regime it will adopt by selectively choosing which elements of the strict cabotage regime can be eased. Although the strict cabotage regime has the requirements for the ships to be built, owned, registered, manned and operated in South Africa by South Africans it has been shown that countries are at liberty to choose which of those requirements they can enforce strictly, and which can be enforced with ease. South African government will have to be strategic in implementing the strict cabotage regime taking into consideration the current status of the shipbuilding and repair facilities, financial support and applicable legislations governing the coastal trade. For now, the government can ease on the requirement for cabotage ships to be built in South Africa and allow for the shipowners to purchase ships built in other countries until such time that ships can be built locally. Additionally, South Africa should encourage the joint-venture model of ownership as seen in China whereby the majority of shares (51%) of that joint-venture resides with the Chinese and the company is situated in China. Such guidelines can be adopted by the South African government whereby a larger percentage e.g. 60% and above can be allocated to South Africans. The Ship Registration Act should be taken into consideration when recruiting shareholders to the above joint-venture companies and not exceed the 64% threshold of shareholders. This will allow for systematic introduction of local ship owners into the market, with the current foreign-owned ships still operating to avoid disruption to the industry. The foreign-owned ship owners may continue to operate in the South Africa's coastal trade by using a cabotage permit system or paying special cabotage levies as it is seen in India.

The third recommendation is for the government of South African to amend the claims ranking provisions under the Admiralty Jurisdiction Regulations Act relating to mortgages. Ship mortgages are used by shipowners as a financial security towards the loan provided by the financial institutions (i.e. mortgagees). Currently, mortgage claims are ranked after any claims raised by the loss of person or property caused by that ship, any port dues or fines imposed by SAMSA, claims raised by service providers in terms of ship repairs, ship chandlers or suppliers, salvage and wreck removals and premiums of marine insurance. This current set up makes it unattractive for financial institutions to provide the much-needed financial support for purchasing ships as the risk of loss is too high. For a strict cabotage regime to be implemented fully, the ships should be built, owned and flagged in South African. These aspiring shipowners will require for the financial institutions to be onboard with the country's ambitions of growing the nation's fleet and that means providing them with a lower risk financial security.

## **5.5 PROPOSAL FOR FURTHER RESEARCH**

The study has shown the need to adopt a strict cabotage regime and the financial measures that the government needs to take in order to implement the strict cabotage regime which will in develop the South African merchant fleet. In order to achieve efficiency and effectiveness in the coastal trade, the South African port systems will require an alternative approach to the currently burden system servicing the global shipping market. South African ports are considered to be highly priced whilst they are inefficient. Future studies need to indicate how the corporatization of the Transnet National Ports Authority's, as required by the National Ports Act, may increase port efficiency to ensure effective implementation of cabotage is South Africa. There is need to determine weak parts in the arrangement of the port calls, cargo offloading and loading as well as finding strategies of mitigation. Therefore, such proposed research needs to concentrate on how authorities are using current infrastructures and superstructures to ease port congestions and how the restrictive cabotage regime will impact on port performance. To guarantee adaption and redesigning of port superstructure and infrastructure, there is a need for further research on current connectivity and usage of coastal shipping in South Africa with other enhanced transport connection, including the execution of real-time information technology arrangements between South Africa's ship operators and ports to enable consistent up-to-date data on the entire value-chain progress.

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