

EVALUATION OF THE IMPACTS OF COVID-19 PANDEMIC ON CUSTOMS CLEARANCE PROCEDURE IN NIGERIA

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Abstract

Customs clearance is a critical process to the facilitation of international trade through improved customs and port administrations. Delays and uncertainties in this procedure lead to significant costs for international trade and the local economy. The COVID-19 pandemic reveals the weaknesses in customs clearance procedures and the response of government most of which have proved counterproductive. This paper evaluated the impacts of COVID-19 on customs clearance procedure in Nigeria and its implication for the regional integration efforts under the African Continental Free Trade Agreement (AfCFTA). The paper adopted doctrinal research method by relying on relevant statutes and literature. It provided an overview of the legal and institutional framework for customs clearance in Nigeria; analysed the customs clearance procedure before and after the pandemic and made necessary recommendations. It argued that the current procedure and policies are inefficient to encourage international trade with Nigeria and is bound to experience challenges in implementing the ambitions of the AfCFTA. It recommended the introduction of a robust customs clearance procedure and the use of technology to simplify procedures and facilitate trade for preparing the country to take advantage of the opportunities presented by the AfCFTA.

Keywords: African Continental Free Trade Agreement; Covid-19; Customs Clearance Procedure; International Trade.

v. Introduction

Trade facilitation in Africa has been a work in progress for many years and is at the heart of numerous initiatives at regional, sub-regional and continent-wide levels. With the imminent implementation of the African Continental Free Trade Agreement,⁴¹³ the stakes are much higher and a lot of reforms and policy changes are required to ensure the successful implementation of the Agreement. Trade facilitation entails the simplification and harmonisation of international trade procedures.⁴¹⁴ It is a series of processes and steps taken towards improving cross-border trade in order to reduce costs.

Customs clearance is the process of obtaining the necessary authorisations and permissions to move goods from one country to another. The ability of a trader to get goods to market in a timely manner through an efficient customs clearance procedure is imperative for maximisation

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⁴¹³ AfCFTA.

⁴¹⁴World Trade Organisation, 'Trade Facilitation',

https://www.wto.org/english/tratop_e/tradfa_e/tradfa_e.html , accessed 13 September 2021

of profit. Lack of predictability and transparency in the nature, application or interpretation of regulations and costs of lost business opportunities occasioned by delays in a given country affect the whole global production chain.⁴¹⁵ Customs clearance form part of the indirect costs in international trade. Although indirect costs are difficult to measure in the long run, they can potentially hinder trade. For smaller firms, the compliance and clearance costs are much higher and this affects their ability to compete in a global market. Therefore, countries where inputs can be imported and exported quickly and reliably, are more attractive locations for investors seeking to invest and offer consumers lower prices, higher quality products, and a greater array of goods.⁴¹⁶

The Nigerian Customs Service has taken precautionary steps to protect their staff to prevent the spread of the virus and also struggles to operate throughout the pandemic to ensure supply chain and business continuity as well as prevent smuggling and other related crimes. The loss of government revenues as a result of slow international trade⁴¹⁷ during the pandemic and the exacerbation of the challenges faced during customs clearance put in doubt the preparedness of Nigeria to exploit the AfCTA for all its benefits.

Special attention has not been given in literature to address the above issues especially since the outbreak of COVID-19 pandemic. Bensassi, Jarreau and Mitaritonna observe that the effect of costs of trade is not to suppress trade but to make it informal which is capable of depriving the Federal Government of revenue and also make it difficult to fully appreciate the nature and quantity of trade between Nigeria and the neighbouring countries.⁴¹⁸ Omale's Book which is an analysis of the provisions of Customs and Excise Management Act in relation to the crime of smuggling⁴¹⁹ describes the inconsistencies in policy and tariff as contributing to smuggling, because the incentives to avoid some form of government intervention are large enough to overcome the expected costs of undertaking an illegal activity.⁴²⁰ Another similar scholarly works⁴²¹ contain general discussions on the enforcement of customs and excise laws in Nigeria without paying special attention to the legislative and institutional framework for customs

⁴¹⁵ Chris Milner, Oliver Morrissey and Evious Zgovu, 'Trade Facilitation in Developing Countries,' Discussion Papers 08 May, 2008. University of Nottingham, CREDIT. <<https://ideas.repec.org/p/not/notcre/08-05.html>> accessed 13 September 2021.

⁴¹⁶ Robert T. Lisinge, 'Trade Facilitation to Integrate Africa into the Global Economy', (2008) *Africa Trade Policy Centre* <<https://repository.uneca.org/bitstream/handle/10855/5548/Bib-39538.pdf?sequence=1&isAllowed=y>> accessed 13 September 2021.

⁴¹⁷ Ifeanyi Onuba, 'FG Records N1.45trn Revenue Shortfall in 2020', *The Whistler*, 19 June 2008 <<https://thewhistler.ng/fg-records-n1-45trn-revenue-shortfall-in-2020/>> accessed 13 September 2021.

⁴¹⁸ [Sami](#) Bensassi, [Joachim](#) Jarreau and Cristina Mitaritonna, 'Regional Integration and Informal Trade in Africa: Evidence from Benin's Borders', *Journal of African Economies*, Vol. 28 (1), January 2019, pp 89–118, <<https://doi.org/10.1093/jae/ejy016>> accessed 13 September 2021.

⁴¹⁹ Omale Musa, *Appraisal of the crime of smuggling in Nigeria*. (Enugu: De-Adro-it innovation, 2017) 127.

⁴²⁰ *Ibid.*

⁴²¹ Babatunde Olomu, *Intelligence and Nigeria's Border Security*, (Ibadan: John Archer Publishers Ltd, 2019). Kofe Olugbesan, *Smuggling, the Crime, the Law*, (Lagos: Stevman Law Publications, 1993); D. Abdullahi, *Corruption and border security in Nigeria* [Paper presentation] 'National Conference on Corruption and National Security in Nigeria: Issues, Problems and prospects organized by the Institute for Anti-corruption Studies', University of Abuja held in Abuja, 9 April 2019.

clearance procedure and the impact of COVID- 19 pandemic on Customs clearance in Nigeria, which have been elaborately discussed in this paper.

This paper focused on the impact of COVID-19 on customs clearance procedure in Nigeria and the ability of the Nigerian customs administration to ensure compliance with customs laws and policies in a manner that encourages international trade and movement of goods as well as its implications for the implementation of the AfCFTA. It adopted a doctrinal research method by relying on relevant statutes and literature. It provided an overview of the legal and institutional framework for customs clearance in Nigeria; analysed the customs clearance procedure before and after the pandemic, and made necessary recommendations.

vi. Legislative and Institutional Framework for Customs Clearance in Nigeria.

The administration of customs clearance in Nigeria is governed by different laws and enforced by several agencies working together to ensure the effective ingress and egress of goods and services in Nigeria. It involves the interplay of institutions including over 12 government ministries and parastatals, as well as other stakeholders who are at the receiving end of these policies.

The Customs and Excise Management Act⁴²² is the principal legislation for customs clearance procedure in Nigeria. It vests the Board of the Customs and Excise with the authority to administer all customs and excise laws as well as collecting and accounting for customs and excise revenue. The Board was established by the Nigeria Customs Service Board Act⁴²³ to formulate policies and guidelines for the Nigerian Customs Service⁴²⁴ and to administer the CEMA⁴²⁵ and impose sanctions where necessary. The NCS is the primary agency responsible for enforcing the laws and regulations relating to prevention of smuggling, customs clearance and collection of customs duties among others. In order to achieve the aims of preventing smuggling, NCS has a wide range of powers and can impose sanctions such as seizure and forfeiture of goods in order to enforce the Act.⁴²⁶ In cases of serious violations, civil or criminal liability may arise, and appropriate prosecution proceedings may be instituted in the Nigerian courts.⁴²⁷

Nigeria uses a combination of tariffs and quotas for generating revenue from international trade and for protecting local industries from highly competitive imports. These trade policies are enforced by the NCS which is empowered under section 45 to assess all imports and exports in order to charge appropriate duties. Again, section 45 of the CEMA empowers the officers of the NCS to inspect, mark, seal or take account of goods intended for import or export at such places designated by the Board of the NCS. Pursuant to the power of the Board to determine a place for inspection,⁴²⁸ Nigeria operated a pre-shipment inspection⁴²⁹ method of customs

⁴²² CEMA, Cap C45, Laws of the Federation of Nigeria (LFN), 2004.

⁴²³ No. 45 of 1992, now in Cap. N100, LFN, 2004.

⁴²⁴ NCS.

⁴²⁵ *Ibid* Section 3.

⁴²⁶ See CEMA, Section 167.

⁴²⁷ CEMA, Section 180(1)(2); *FRN v. Osahon*, (2006) WRN 1.

⁴²⁸ CEMA, Section 145(2).

⁴²⁹ PSI.

clearance.⁴³⁰ The procedure from 1970 till 2006 required goods to be inspected and cleared prior to exportation or importation. In 2006, the government returned to Destination Inspection⁴³¹ for imports with reformed guidelines, requiring goods destined for Nigeria to be inspected at the point of entry. The procedure under the DI will be elaborated upon subsequently.

The CEMA is supported by various subsidiary legislations such as the Export (Prohibitions) Act.⁴³² The Act places several goods under the export prohibition list, including maize, timber (rough or sawn), raw hides and skin (including all unfinished leather), among others.⁴³³ Under the CEMA, the President and Commander in Chief of the Armed Forces of Federal Republic of Nigeria, is empowered to designate points of entry and exit for customs purposes such as customs ports, airports and customs stations generally.⁴³⁴ He is also empowered to make orders relating to prohibition of importation and exportation of goods into the country;⁴³⁵ make regulations for the examination of postal articles for the purposes of customs and for collection of duties chargeable; declare any goods to be free from payment of duty,⁴³⁶ among other powers. The President, therefore, plays an important role in devising the policy for customs clearance in Nigeria. In health emergencies such as the COVID-19 pandemic, the Nigerian Quarantine Act⁴³⁷ empowers the President to make regulations on the procedures and steps to be taken to manage dangerous infectious diseases.⁴³⁸ Regulation 3 of the Quarantine (Ships) Regulations made pursuant to Section 4 of the Quarantine Act empowers the port health officer who is appointed by the Minister of Health to inspect ships at the ports or on arrival and to examine persons proposing to embark on ships that are due for departure.⁴³⁹

The Federal Ministry of Finance is empowered under the CEMA to make regulations for the procedure for customs clearance⁴⁴⁰ and guidelines as well as the procedure for importation and exportation⁴⁴¹ of goods and to appoint custom stations for the examination and payment of any duty chargeable on such goods.⁴⁴² Pursuant to this, the Minister issued the Import Guidelines, Procedure and Documentation Requirement, 2013 as well as the Revised Guidelines and Addendum issued in 2017 and 2018 respectively. These amendments to the Guideline were made in order to facilitate the ease of doing business in the country.⁴⁴³ The Board of NCS is subject to the general control of the Minister. The Department of Technical Services of the

⁴³⁰ Pursuant to the Pre-Shipment Inspection of Imports Act, CAP P26, (LFN), 2004.

⁴³¹ DI.

⁴³² CAP E22 (LFN), 2004.

⁴³³ Other relevant legislations are the Customs and Excise (Special Panel and other Provisions) Cap 45, (LFN), 2004 and the Customs and Excise Agents (Licensing) Regulations 1968 (Legal Notice 95/1968 as amended).

⁴³⁴ See CEMA, Section 12.

⁴³⁵ See CEMA, Sections 24 and 48.

⁴³⁶ See CEMA, Section 42(2).

⁴³⁷ CAP Q2 LFN 2004.

⁴³⁸ *Id* Section 4.

⁴³⁹ Quarantine (Ships) Regulations, Regulation 21.

⁴⁴⁰ See CEMA, Section 36.

⁴⁴¹ CEMA, Section 57(1).

⁴⁴² See CEMA, Section 18(1).

⁴⁴³ Federal Ministry of Finance, Addendum to the 2017 Revised Import Guidelines, Procedure and Documentation Requirements (2017), <<https://pwc-nigeria.typepad.com/files/addendumto2017revisedimportguidelines.pdf>> accessed 20 September 2021.

Ministry is responsible for its mandate on Tax policy and this includes determining the tariff rates implemented by the NCS, as well as approval of import duty waivers upon the satisfaction of the laid down criteria. The Federal Ministry of Industries, Trade and Investment have the main responsibility for making and implementing trade policy. It championed the initiative of the Nigeria Trade Portal⁴⁴⁴ which is a platform for accessing the full range of services offered by the different agencies involved in customs clearance. It also provides a step-by-step description of the import and export procedures in Nigeria in a bid to enhance the transparency in the procedure and to facilitate its simplification. The Industrial Inspectorate Department of the Ministry also plays a role in the customs clearance procedure by evaluating transactions with Post Landing charges before such fees can be remitted.⁴⁴⁵

The Standard Organisation of Nigeria⁴⁴⁶ is the apex standardisation body established by the Standard Organisation of Nigeria Act⁴⁴⁷ to standardise methods and products of Nigeria's industries. It issues and enforces conformity assessment guidelines for imports and exports known as the Standard Organisation of Nigeria Conformity Assessment Program⁴⁴⁸ and is actively involved in import inspection of goods and quality assessment at the ports as part of the customs clearance procedure.⁴⁴⁹ Standards set by SON are mandatory and must be met before any product can be registered or certified. The National Agency for Food and Drug Administration⁴⁵⁰ controls the production, trade and sale of food, drugs, cosmetics, chemicals, detergents, medical devices and packaged water. By its enabling legislation,⁴⁵¹ NAFDAC is empowered to regulate and control the importation, exportation, manufacture, advertisement, distribution, sale and use of regulated products (food, drugs, cosmetics, medical devices, bottled water and chemicals) by conducting tests to ensure compliance with standards specifications predetermined by the NAFDAC Council.⁴⁵² The role of NAFDAC is relevant when importing or exporting (processed and semi-processed) food items, drugs, cosmetics, medical devices, chemicals and detergents.⁴⁵³ NAFDAC is also empowered to inspect imported regulated products and production sites⁴⁵⁴ as well as issue certification for regulated products destined for export.

The Central Bank of Nigeria⁴⁵⁵ has the main objective of promoting stability and continuity in economic management. In line with this, the Central Bank of Nigeria Act⁴⁵⁶, widened the objects of the CBN to include ensuring monetary and price stability as well as rendering economic advice to the Federal Government. The Trade and Exchange Department has the

⁴⁴⁴ Nigerian Trade Portal, 'Presentation' <<https://nigeria.tradeportal.org/Team?l=en>> accessed 21 September 2021.

⁴⁴⁵ See the Nigeria Customs Service, Guidelines for Destination Inspection, <https://web2.customs.gov.ng/?page_id=3145> accessed 21 September 2021.

⁴⁴⁶ SON.

⁴⁴⁷ No. 14, 2015.

⁴⁴⁸ SONCAP.

⁴⁴⁹ *Ibid* section 5 generally, and 5(g) and (h) in particular.

⁴⁵⁰ NAFDAC.

⁴⁵¹ National Agency for Food and Drug Administration and Control (NAFDAC) Act, Cap N1, (LFN), 2004.

⁴⁵² NAFDAC Act, Section 5(a).

⁴⁵³ NAFDAC, 'Chemicals', <<https://www.nafdac.gov.ng/chemicals/>> accessed 23 September 2021.

⁴⁵⁴ NAFDAC Act, Section 5(d).

⁴⁵⁵ CBN.

⁴⁵⁶ 2007, which repealed the 1991 CBN Act.

mandate of developing and articulating the trade and exchange rate policies in conjunction with other arms of government.⁴⁵⁷ Other federal government agencies such as the Nigeria Ports Authority, Nigeria Export Promotion Council, Nigeria Export-Import Bank, Nigerian Export Processing Zone Authority, Nigeria Investment Promotion Commission, among others, also play certain key roles in importation and exportation of goods in Nigeria. Authorised Dealer Banks⁴⁵⁸ play the important role in processing customs applications in receiving and remitting customs duties and charges as well as implementing the foreign exchange rules of the CBN. Other key players such as licensed customs and freight forwards agents, acting collectively through the Association of Nigerian Licensed Customs Agents⁴⁵⁹ and Save Nigeria Freight Forwarders Importers and Exporters Coalition⁴⁶⁰ and the Organised Private Sector⁴⁶¹ are involved in policymaking through their participation in official government bodies among others. The main organisations representing the private sector include the Manufacturers Association of Nigeria; the National Association of Chambers of Commerce, Industry, Mines and Agriculture;⁴⁶² and the Association of Nigerian Exporters.⁴⁶³ The federal government is increasingly involving certain stakeholders, particularly those from the OPS, in the development of legislation and deliberations on reforms.⁴⁶⁴ However, these are usually representatives of well-known and established businesses. Very few of the stakeholders who are consulted on these reforms represent the interest of small and Medium Scale Enterprises⁴⁶⁵ consumers or informal rural traders who are even more affected by the policies. Furthermore, some agencies could improve their consultative processes, improve access to information and enhance the capacity of their officials.

3. Customs Clearance Procedure in Nigeria

As shown above, a by-product of Nigeria's customs clearance reforms is a complex web of laws, regulations, government institutions and stakeholders which are involved in different stages of the customs clearance process. Under the extant policy, all imports are inspected on arrival into Nigeria by the NCS, while firms, which are authorised Destination Inspection Service Providers, provide scanning services at ports of entry. The plans by the NCS to acquire scanners to ensure the efficiency of cargo clearing at ports have been met with delays and controversies since 2017⁴⁶⁶ and this has caused drawbacks in the efforts to fast-track the procedure.

⁴⁵⁷ Central Bank of Nigeria, 'Economic Policy Directorate', <<https://www.cbn.gov.ng/AboutCBN/Dir-Policy.asp#ted>> accessed 23 September 2021

⁴⁵⁸ ADBs.

⁴⁵⁹ ANLCA.

⁴⁶⁰ SNIFFIEC.

⁴⁶¹ OPS.

⁴⁶² NACCIMA.

⁴⁶³ ANE.

⁴⁶⁴ The preparation of the Nigeria Customs Service Bill, 2019 included consultations with the private sector. The Bill is still being carefully considered by the National Assembly.

⁴⁶⁵ SMEs

⁴⁶⁶ Adaku Onyenauchey, 'Uncertainty Trails N8.47 billion Customs Cargo Scanners', *The Guardian*, 27 January 2021 <<https://guardian.ng/business-services/maritime/uncertainty-trails-n8-47-billion-customs-cargo-scanners/>> accessed 23 September 2021.

An

outline of the steps involved in Customs Clearance Process⁴⁶⁷ in the context of importation will be highlighted below. This will form the basis of the analysis of the challenges exacerbated by COVID-19. To be able to import goods into Nigeria, an importer is required to arrange the necessary documents including insurance certificate, certificate of origin, permits, quotas, waivers, trademark registration, company registration etc. The process of obtaining necessary documents is complex and often time-consuming. Subsequently, the importer is required to open a Form M on the Nigerian Trade Platform⁴⁶⁸ attaching the required documents such as insurance certificate, proforma invoice and the product certificate.⁴⁶⁹ Nigeria's Single Window Portal is a trade facilitation project of 12 Nigerian Government agencies involved in the customs clearance process.⁴⁷⁰ It also allows traders to access customs regulations online, submit customs documents electronically, track transaction status online, and submit electronic payments. The listed documents are then submitted to the ADB and the originals of the documents are presented to the processing bank before validation. The ADB validates, processes the Form M and transmits the application to the NCS. Upon receipt, the NCS issues a Pre-arrival Assessment Report,⁴⁷¹ if the Form M is accepted. The PAAR is used to commence the clearance of the cargo. The PAAR system allows importers to submit their import documents online for assessment and approval before the arrival of the cargo. This replaced the Risk Assessment Report System in 2013 to facilitate trade and revenue collection. Once the PAAR is issued, the importer then arranges for the shipment of the goods. The importer is then required to prepare a Single Goods Declaration⁴⁷² which is submitted to the NCS using the NCS online platform, after which an assessment notice of the duty and other charges payable will be generated and issued to the importer. The next step is for the importer to make payment at the selected bank. After payment, the importer can request the release of consignment through the NCS platform.

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control through the Risk Management Information will determine the level of scrutiny required for releasing the goods and either a scan or a physical examination will be conducted. There are four possible risk outcomes: Green, Blue, Yellow and Red. Green and Blue SGDs mean that the

⁴⁶⁷ See the Guidelines for Import and Customs Clearance generally, available at https://web2.customs.gov.ng/?page_id=3171 accessed 24 September 2021

⁴⁶⁸ The Single Window System.

⁴⁶⁹ To receive clearance for goods imported into Nigeria, traders must present a Bill of Lading, Commercial Invoice Exit Note, duly completed Form 'M', Packing list, Single Goods Declaration, and a Product Certificate. Until recently, the importer was also required to submit a Combined Certificate Value & Origin (CCVO) which contains the description of goods, port of destination, country of origin, date of shipment, country of supply etc. However, in line with international trading procedures and recommendations from stakeholders, the Central Bank of Nigeria (CBN) reviewed its trade transactions guidelines and replaced the CCVO with the simpler Certificate of Origin in April 2017. The revision also prescribes a 48-hour maximum processing time from the receipt of application. See Central Bank of Nigeria, Revised Import and Export Documentation and Timeline for Processing Form "NXP", CBN, 19 April, 2017 <https://www.cbn.gov.ng/out/2017/ccd/revised%20import%20and%20export%20docs.pdf> accessed on 24 September 2021.

⁴⁷⁰ The Single Window Portal can be accessed at <https://trade.gov.ng/en/>.

⁴⁷¹ PAAR.

⁴⁷² SGD.

goods are released from customs control and do not require any Customs intervention. Yellow and Red are for SGDs requiring Document Checking and Scanning/Examination respectively. Most goods will likely fall in the second category. The consignment, if cleared after examination will then be released by Terminal Operator. While it is easy to capture and assess trade involving large corporations with global networks, it is difficult for smaller businesses that lack the sophistication and means of complying, to comply with the procedure. The state of customs clearance in Nigeria therefore involves complex infrastructure, red tape, protectionist policies and increased cost of compliance which has adverse consequences for international trade encouraging smuggling and informal trade.

3 Impacts of Covid-19 on Customs Clearance Procedure in Nigeria

COVID-19 has affected trade and the already complex custom clearance procedure in Nigeria, in several ways. On the supply side, the pandemic has pushed relevant authorities to adopt restrictive measures ranging from “internal movement restrictions” to “international border closures” through “required closing or work from home”. The Nigerian government ordered the closure of land borders with Benin, Niger and Cameroon in 2019 until January 2021 in a protectionist move to prevent smuggling of consumer items without achieving the set objective.⁴⁷³ In response to the pandemic, the borders were also temporarily closed for human traffic further tightening restrictions.⁴⁷⁴ The international border closures reduced air freight capacity while internal movement restrictions and closures have affected businesses, halted industrial production, and limited port activities. As a result, it curtailed the capacity to produce goods and export them. This reduces the movement of products across Nigeria’s borders. On the demand side, production limitations were exacerbated by the inability to source necessary production inputs from abroad. Also, the reduction in aggregate demand among the world’s largest importing countries reduced Nigeria’s capacity to successfully export the goods they do manage to produce. This was also exacerbated in part by her COVID-related business policies across multiple industries.

The effects of COVID-19 became particularly pervasive, partly due to the rise of global value chains,⁴⁷⁵ in which products cross at least one border before final assembly and further export to final consumers.⁴⁷⁶ Multiple customs clearances and the COVID-19 restrictions in Nigeria caused significant hardship to traders. While COVID-19 cases were still relatively low during

⁴⁷³ Matthieu Millecamps, ‘The Benin-Nigeria Border is officially open, but smuggling is on the rise’, *The Africa Report* 18 January 2021, <<https://www.theafricareport.com/59504/the-benin-nigeria-border-is-officially-open-again-but-smuggling-is-on-the-rise/>> accessed on 27 September 2021.

⁴⁷⁴ Camillus Eboh, ‘Nigeria Closes Land Borders to Fight Corona Virus Spread’, *Reuters*, 23 March 2020, <<https://www.reuters.com/article/health-coronavirus-nigeria-borders/nigeria-closes-land-borders-to-fight-coronavirus-spread-idINL8N2BG8SY>> accessed on 27 September 2021.

⁴⁷⁵ GVCs.

⁴⁷⁶ Over two-thirds of world trade occurs through GVCs. See World Bank; World Trade Organization, 2019. *Global Value Chain Development Report 2019: Technological Innovation, Supply Chain Trade, and Workers in a Globalized World* (English) World Bank Group. <<http://documents.worldbank.org/curated/en/384161555079173489/Global-Value-Chain-Development-Report-2019-Technological-Innovation-Supply-Chain-Trade-and-Workers-in-a-Globalized-World>> accessed 28 September 2021.

the first quarter,⁴⁷⁷ Nigeria adopted measures to prevent the pandemic's spread. Although the ports remained open during lockdowns, strict measures were put in place in line with the protocols established by the Presidential Task Force on COVID-19 and the Centre for Disease Control such as mandatory quarantining of ships before discharge or taking up of cargo. This exacerbated cargo congestion at the ports and as a result, exports such as cocoa, sesame and cashew were stalled.⁴⁷⁸ Reduction of port activities affected the shipment of goods, generating unusual shipping routes and making product shipments more difficult, more expensive, and more time-consuming.

In addition to local lockdowns, reduced port activities delayed cocoa exports, leaving at least 30,000 tons stranded at the Lagos port and in warehouses. The cocoa industry faced additional stress in Nigeria as cocoa farmers were unable to access pesticides, which are imported due to COVID-related import and distribution challenges.⁴⁷⁹ This in turn, reduces cocoa supplies, cocoa exports, and cocoa income even further than the export-related reductions. Furthermore, while the use of technology has been introduced in the procedure, such use is limited and largely requires paper documents and physical submissions at the ADBs. Most of the preliminary documents required for customs clearance such as certificates and waivers take a longer time (even months) to obtain. Also, it is becoming increasingly difficult for the NCS to make conclusive decisions regarding duties in the narrow time frame necessary to meet the tight deadlines and gain national economic benefits that can be derived as the result of the smooth and timely clearance of goods. It is not appropriate to delay the clearance of goods whilst resolving all enquiries unless fraud is suspected. Many administrations, therefore, concentrate their controls on the post-importation/exportation environment, whilst retaining selective and targeted checks at the ports. This system of post-clearance audit will be highlighted in detail subsequently. Also, the Federal Government through the CBN operates a fragmented foreign exchange rate policy maintaining multiple rates at different windows with restrictions on who can access which rates and for what purposes. Currently, about fifty product items including essential food and agricultural products are excluded from accessing foreign exchange through a lower rate forex source.⁴⁸⁰

In response to the COVID-19 pandemic, the CBN suspended the sale of foreign exchange to Bureau De Changes;⁴⁸¹ this exacerbated the inefficiencies of the multiple window policy and

⁴⁷⁷WHO, 'WHO Coronavirus (COVID-19) Dashboard' <<https://covid19.who.int>> (accessed 30 September 2021).

⁴⁷⁸Tolani Awere, 'Nigeria Cocoa Exports Stalled Over Covid-19 Safety Protocols', *Bloomberg*, 5 May 2020, <<https://www.bloomberg.com/news/articles/2020-05-05/nigeria-cocoa-exports-stalled-over-covid-19-safety-protocols>> accessed 30 September 2021.

⁴⁷⁹Anthony Myers, 'Nigerian cocoa faces serious economic crisis due to coronavirus outbreak', *Confectionery News*, 29 June 2020, <<https://www.confectionerynews.com/Article/2020/06/29/Nigerian-cocoa-faces-serious-economic-crisis-due-to-coronavirus-outbreak>> accessed 30 September 2021.

⁴⁸⁰Uche Nzeka and Ebenezer Boluwade, 'Food and Agricultural Import Regulations and Standards Country Report,' *US Department of Agriculture FAIRS Country Report*, (2020), <https://agriexchange.apeda.gov.in/IR_Standards/Import_Regulation/FoodandAgriculturalImportRegulationsandStandardsCountryReportLagosNigeria12312020.pdf> accessed 30 September 2021.

⁴⁸¹BDCs. Oladeinde Olawoyin, 'Coronavirus: CBN suspends sales of forex to BDCs', *Premium Times Nigeria*, 27 March 2020, <<https://www.premiumtimesng.com/news/top-news/384239-coronavirus-cbn-suspends-sales-of-forex-to-bdcs.html>> accessed 30 September 2021. .

contributed to the further weakening of the naira. Again on 10 September 2020, while still unable to bridge the food gap created by the pandemic, the President ordered the CBN to disallow access to forex by importers of food and fertilisers in a bid to further preserve the foreign exchange reserves of the country.⁴⁸² The continued operation of a fragmented foreign exchange policy and the sudden issuance of policies and directives banning and unbanning imports have severe consequences for international and local trade affecting farmers, businesses, processed food manufacturers and consumers. Bensassi, Jarreau and Mitaritonna find that non-tariff barriers such as those described above in the form of unsystematic and unpredictable policies and the resultant delays contribute to the increased use of informal trade as a means of engaging in trade between Nigeria and Benin Republic.⁴⁸³ With the imminent implementation of the AfCFTA, these inefficiencies must be tackled and resolved in order to ensure a smooth transition and attainment of its ambitions.

4 Conclusion

Nigeria has a protectionist trade policy with high peaks, non-tariff barriers and import bans. Given that the AfCFTA could significantly mitigate the economic consequences of COVID-19, particularly if the situation worsens, Nigeria needs to speed up its implementation by putting in place sufficient customs policies that will ensure its success. Fast-tracking imports and exports through a fully-efficient customs clearance require ensuring and maintaining an open and predictable trading system including the access of foreign exchange for trade and customs clearance purposes; re-establishing procedures that take into account emergencies, and foregoing protectionist policies.

Furthermore, the lack of a streamlined process for the examination of goods at the points of entry has led to delays and significant transaction costs for international traders. The introduction of scanners was also intended to reduce the physical examination of goods thereby reducing the clearance timeframe for goods at the ports. This is in line with the federal government directive that goods should be cleared within 48 hours from the ports. However, multiple examinations and certifications by the different agencies involved in the process lead to significant delays. To avoid multiple examinations and minimise delays during inspections, Omale recommends that the relevant agencies eg. NAFDAC, SON, NCS, NDLEA, DPR, etc. should simultaneously work with the inspection agents.⁴⁸⁴ Multiple examinations and indeed the need for the physical examination should be dispensed with, except in cases where fraud, smuggling or other crimes are suspected.

Sections 28 and 29 of CEMA, empowers the NCS to introduce concessions and exemptions in the customs clearance procedure and to simplify the process. Pursuant to these provisions, enhanced guidelines could be utilised to simplify the procedures in order to encourage trade in emergencies such as a global pandemic. It is submitted that any new regulation and drafting of

⁴⁸² Elisha Bala-Gbogbo, 'Nigeria Blocks Dollar Access For Food and Fertilizer Import, Bloomberg,' 10 September 2020, <<https://www.bloomberg.com/news/articles/2020-09-10/nigeria-s-buhari-bans-dollars-for-food-and-fertilizer-imports>> accessed 30 September 2021.

⁴⁸³ Bensassi, Jarreau, Mitaritonna above n 6.

⁴⁸⁴ Omale, above n 7 at 194.

the procedure should involve comprehensive consultations with all the key institutions involved in the customs clearance procedure. This will ensure that any policy or regulation that will be produced will adequately consider all key players.

In addition to permissible concessions under Sections 28 and 29 of the CEMA, a comprehensive contingency plan including emergency procedures involving the collaboration of all agencies involved in customs clearance should be factored into such policy to ensure the uninterrupted administration of customs clearance in Nigeria. It is observed that the National Emergency Management Authority⁴⁸⁵ and the Nigeria Centre for Disease Control⁴⁸⁶ do not play an active role in the administration of customs clearance in Nigeria. The Nigeria Quarantine Act requires that regulations regarding infectious diseases in Nigeria be made by the President while the administration of such regulations is carried out by a port health official appointed by the Minister of Health. However, any robust emergency control plan to facilitate trade has to take into account emergencies and contains sufficient provisions to enable the NCS to effectively navigate such circumstances across all customs points. It is recommended that the contingency plan will require the collaboration of the NCDC and the NEMA.

It is necessary to address the question on how to manage risk of abuse of the concessions. There is a possibility that any permissible concession could increase smuggling, fraud, revenue leakage and security risks. It is suggested that this can be managed through increasingly using risk-centred strategies such as post-clearance audit procedures and bonded warehouses in order to reduce delays and mitigate health risks brought about in emergencies while maintaining the proper level of scrutiny, verification and regularization of the imports and exports. Post Clearance Audit⁴⁸⁷ or audit-based controls are measures undertaken by customs authorities to verify the accuracy and authenticity of declarations through the examination of the relevant books, records, business systems and commercial data held by persons concerned. In other words, it is the process of determining, after examining the import-related papers of the importer, commercial documents and its accounts/balances, whether the goods imported are the ones declared by the importer or not, whether any duties or taxes are still to recover or not, whether there is under-invoicing or not, and whether the Act, rules and other prevailing laws are observed in the true sense or not.

Another means for managing the risks associated with a relaxed clearance procedure and concessions would be to monitor the process using appropriate technology and to set out appropriate sanctions against any abuse of the process. Apart from confiscation and detention of goods, arrest and prosecution, the CEMA prescribes certain penalties including death penalty under certain circumstances. However, due to lack of sufficient detention facilities and the cost of setting up such facilities, attention could be focused on the divestment of illicit proceeds of smuggling/fraud and the use of non-custodial sentencing. Appropriate technology and data collection tools will indeed be required to implement this and serious offenders could be blacklisted.

⁴⁸⁵NEMA.

⁴⁸⁶NCDC

⁴⁸⁷PCA.

COVID-19 pandemic has shown the importance of reforms which the Nigerian government has been slow to embrace. Therefore the COVID-19 health crisis calls for a better managed service delivery system that will enhance greater transparency, efficiency, procedural uniformity, streamlined documentation requirements, increase automation and use of information technology as well as an efficient system for the collection and analysis of quality trade data. It has also highlighted the need for Customs administrations and other trade stakeholders to engage with each other to appreciate the challenges in the process and the necessary steps for dealing with them.

This paper has highlighted several defects in the extant customs clearance procedure which would need to be addressed in order to position the country to take advantage of the AfCFTA. It shows that the procedure is defective, encouraging delays to trade and is not useful in emergencies such as a pandemic. It offers a useful guide for restructuring and improving the current clearance procedure by identifying the clogs in the procedure and highlighting parameters for managing emergency and disaster situation. It is hoped that the issues highlighted in this paper will be considered by policy-makers ahead of the implementation of the AfCFTA in Nigeria.

INTERROGATING THE ENFORCEMENT OF CREDIT SECURITY RIGHTS IN NIGERIA, GHANA AND KENYA.⁴⁸⁸

Abstract

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