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

John Funsho Olorunfemi* Ijeoma Nwando Nwala& Ebelechukwu Okiche*****

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 relyingon 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 imperativefor maximisation

* John Funsho Olorunfemi, PhD, LLM (NIG.), LLB (IFE), BL. Funsho teaches Law of Arbitration and Nigerian Legal System at Faculty of Law, University of Nigeria. Email - John.olorunfemi@unn.edu.ng

** Ijeoma Nwando Nwala, LL.M (LONDON); LLB (NIG); BL. Ijeoma is an ASSOCIATE, REED SMITH LLP (LONDON). Email - i.n.nwala@lse.ac.uk

***Ebelechukwu Okiche, PhD (Nig), BL. Ebele teaches Jurisprudence and Law of Consumer Protection at the Faculty of Law, University of Nigeria, Enugu Campus. Email - ebeleokiche@unn.edu.ng .

[413] AfCFTA.

[414]World 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 revenueas a result of slow international trade[417] during the pandemic and the exacerbation of the challenges faced during customs clearance put in doubtthe 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, JarreauandMitaritonna 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 smuggling[419]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 works[421] 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

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[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 PolicyCentre*<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 mannerthat encourages international trade and movement of goods as well as its implications for the implementation of the AfCFTA. It adopted a doctrinal research methodbyrelyingon 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 andparastatal,as well asother stakeholders who are at the receiving end of thesepolicies.

The Customs and Excise Management Act[422] is the principal legislation for customs clearance procedure in Nigeria. ItveststheBoard of the Customs and Excisewith 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 Act[423] to formulate policies and guidelines for the Nigerian Customs Service[424]and to administer the CEMA[425] and impose sanctions where necessary. The NCSis 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 inspection[429]method of customs

[422] CEMA, Cap C45, Laws of the Federations 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 Inspection[431]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 byvarious 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 freefrom 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 Act[437] 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 clearance[440] and guidelines as well as the procedure for importation and exportation[441] 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 theImport 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

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[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,Section57(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://pwcnigeria.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 Portal[444] 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 Nigeria[446]is the apex standardisation body established by the Standard Organisation of Nigeria Act[447]to standardise methods and products of Nigeria's industries.Itissuesand enforces conformity assessment guidelines for imports and exports known as the Standard Organisation of Nigeria Conformity Assessment Program[448]and is actively involved in import inspection of goods and quality assessment at the portsas part of the customs clearance procedure.[449]Standards set by SON are mandatory and must be met before any productcan be registered or certified.The National Agency for Food and Drug Administration[450]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 sites[454] as well as issue certification for regulated products destined for export.

The Central Bank of Nigeria[455]has the main objective of promoting stability and continuity in economic management. In line with this, the Central Bank of Nigeria Act[456], 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

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[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 Banks[458]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 Agents[459]and Save Nigeria Freight Forwarders Importers and Exporters Coalition[460]and the Organised Private Sector[461]are involved in policymaking through their participationin official government bodies among others.Themain 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 deliberationson 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 Enterprises[465] 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

Asshown 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 2017[466] and this has caused drawbacks in the efforts to fast-track the procedure.

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[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 Onyenaucheya, '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 Process[467]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 Platform[468] 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.TheADB validates, processes the Form M and transmits the application to the NCS.Upon receipt, the NCS issues a Pre-arrival Assessment Report, [471]if theForm 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 Declaration[472]which is submitted to the NCS using the NCS online platform,afterwhich 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.

Customs 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'sborders. 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 wasalso 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

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[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 Report2019: 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 theports 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 increasinglydifficult 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

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[477]WHO, '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.

[479]Anthony 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.

[480]Uche 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.

[481]BDCs. 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 order 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 manufactures 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 policiesthat will ensure its success.Fast-tracking imports and exports through a fully-efficient customs clearance require ensuring and maintainingan 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 processed for the examination of goods at the points of entry has led to delays and significant transaction costs for international traders. The introduction ofscanners was also intended to reduce the physical examination of goods thereby reducing the clearance timeframefor 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, acomprehensive 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 Authority[485]and the Nigeria Centre for Disease Control[486]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 containsufficient 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 Audit[487]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.

[485]NEMA.
[486]NCDC
[487] PCA.

COVID-19 pandemic has shown the importance of reforms which the Nigerian government has been slow to embrace. Therefore the COVID-19health 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

[488]Dr Grace Ogonda Akolokwu, B.A. Education; LL. B; B.L; LLM, PhD; Associate Professor of Human Rights & Property Law, Faculty of Law, Rivers State University, Nkpolu-Oroworukwo, Port Harcourt; akolokwu.grace@ust.edu.ng&Emerhana Onoriode Paul Esq.