

PRE-SHIPMENT INSPECTION AND THE CHALLENGE OF PORT CONGESTION IN NIGERIA.

Introduction

The expression 'pre-shipment inspection' connotes the examination/inspection of goods either in foreign countries prior to shipment of those goods to Nigeria or in Nigeria prior to exportation of those goods from Nigeria.

Between Nigeria's independence in 1960 and the late 1970s, goods being imported into Nigeria or exported from the country were subjected to legal compliance inspections at the nation's Seaports or airports through which the goods were imported or exported. The 1970s oil boom accelerated the pace of development of the Nigerian economy, resulting in a sustained increase in imports, but without a corresponding rise in exports (except crude oil). The fact of an import-driven economy made it essential to monitor the quantity and quality of goods being imported into the country. The Nigeria Customs Services (NCS) and other Government agencies involved in the importation/exportation process lacked the resources and technical knowledge to accurately perform this function.

In order to block this loophole and increase revenue generated from importation transactions Government decided to appoint external inspection agencies (such as Bureau Veritas, SGS and Cotecna) who were perceived as capable of handling this function.

The inspection agents were appointed agents of the Central Bank of Nigeria (CBN) and contracted to inspect shipments to Nigeria from various parts of the World. The agents' findings on importation transactions, including quantity/quality assessments, pro-forma invoice costing/valuation and import duty/port charges assessments were regularly reported to the CBN and the Nigerian Ministry of Finance Incorporated (MoF). Official documents issued by these agents such as "Clean Report of Findings (CRF)" and Import Duty Reports (IDR), together with certain other shipment documents, such as Bills of Lading, soon acquired household usage, as they were absolutely essential to the importation of any goods into the Federal Republic of Nigeria. In order to preclude a monopoly situation in which Government could be held to ransom by a single agent, a number of inspection agents were appointed to monitor imports from different continents or areas of the World, e.g. North America, South America, Europe, Asia, etc.

LEGAL BASIS

The first Nigerian statute on pre-shipment inspection, styled the "Pre-shipment Inspection of Imports Act, 1979" took effect from 1st January 1979. It was subsequently repealed and replaced by the Pre-shipment Inspection of Imports Act No. 11 1996.

With regard to inspection of imports, the 1996 Act provides thus:

S 1 (1) As from the commencement of this Act, no goods to which this Act, applies

Whether contained or not and irrespective of value and personal effects (excluding such personal effects which are accompanied and subject to 100 percent inspection at destination); and

Whether re-exported into Nigeria from any neighbouring country, shall be imported into Nigeria unless accompanied by a clean report of finding, and an import duty report issued in respect of such goods to the overseas sellers of the goods by the inspecting agent referred to in Section 4 of this Decree”.

The Act also deals with the pre-shipment inspection of goods being exported from Nigeria.

POLICY ISSUES

The policy thrust behind pre-shipment inspection is multi-faceted: Firstly, an accurate record of importation and exportation of goods and produce from any given country is essential to national economic planning. Secondly, pre-shipment inspection is the first line of defence against would-be smugglers and persons intending to import either banned or regulated goods and substances into the country. Thirdly, pre-shipment inspection is intended to combat the practice by unscrupulous importers of under-invoicing and under declaration of the value of imports for the purpose of reducing import duty payable (and, conversely, over-invoicing of exports), thereby increasing revenue of accruing to the Nigerian Government’s coffers from affected transactions.

The Nigerian Government’s Pre-shipment Inspection policy has not been without its detractors. Certain importers have asserted that by handing over the function of pre-shipment inspection to foreign organizations, Government has handed the destiny of the nation to foreigners (rather than leaving it in the hands of Nigerians) and diverted additional income meant for Nigerians to foreign organizations. Accusations have also been leveled over time to the effect that the hard currency fees charged by the agents are excessive and constitute a direct drain on the nation’s economy, particularly when Nigerian citizens and associations could have successfully done the job at a fraction of the sum paid to the agents.

It is also claimed that the operations of the inspection agents are tainted by the same corrupt practices that the Nigerian Government sought to avoid in the first place, particularly as the Nigeria Customs Service (NCS) frequently claims to have discovered numerous cases of incorrect entries on IDRs and CRFs in respect of goods being imported. On the basis of these discoveries, the NCS and a number of licensed Customs agents, who are themselves Nigerian nationals, insist that the benefits of destination inspection, i.e. inspecting goods and cargo upon their entry into Nigeria at the nation’s ports, far outweigh those of pre-shipment inspection. Furthermore, they argue that since it is the statutory function of the NCS to charge and receive Customs duty and other port charges, it is not possible to exclude the NCS from the import duty assessment and inspection processes.

The argument between proponents of pre-shipment inspection and those of destination inspection has been the subject of heated debate in the Nigerian media. Most interestingly, however, it has been argued of recent, that the incorrect duty assessments (IDRs) raised by the pre-shipment inspection agents are the reason for the delay encountered by importers in the clearance of their goods at Nigerian seaports. For example, an importer who is in possession of an IDR assessing the duty payable on his consignment as a particular amount may find it difficult to raise extra funds in the event that the NCS declares that the assessment on his IDR is incorrect. The additional assessment raised by the SNCS in such cases of the port congestion currently being witnessed in Nigeria. The importer almost invariably has to bow to the will of the NCS, otherwise he will not be able to clear his cargo. The assessment earlier raised by the pre-shipment inspection agent is consequently abandoned. This leads to briefly examine the problems that have been associated over time with the pre-shipment inspection process.

PROBLEMS ASSOCIATED WITH THE PRE-SHIPMENT INSPECTION PROCESS.

PORT CONGESTION

The NCS regularly publicizes cases of concealment and/or under declaration of cargo. Recently the Federal Executive Council stated that any fake declaration in respect of goods being imported would attract a 50% indemnity apart from payment of the appropriate duty for those goods. The difficulty faced by importers in raising funds to pay this extra penalty leads them to abandon their goods within the ports, thereby causing port congestion.

It should however be pointed out that the issue of congestion is more serious at the primary shipping ports in Lagos in the western part of the country. The city of Lagos remains by far the largest market in the whole of West Africa, leading importers of consumer goods to offload cargo in Lagos and ignore other relatively newer ports situated in Nigeria but further down the coast, such as Calabar, Warri, Port-Harcourt, etc. the resultant situation is under-utilization of the other ports and extreme congestion in Lagos.

Additional Shipping Charges

Due to the experience of multiple inspection – both pre-shipment inspection and destination inspection, importers to Nigeria currently pay an extra \$300 per container on Nigeria-bound cargo. This additional charge is supposed to compensate the shipowners for the additional time spent in undertaking voyages and cargo delivery to Nigeria. This additional charge is passed on to the Nigerian consumers of imported goods, in the form of higher purchase prices. In fairness to the shippers, it is by no means unusual to see numerous sizeable cargo vessels lying offshore Lagos ports awaiting their turn to berth.

INFLATIONARY TENDENCIES

Delay in clearance of goods at Nigerian ports means not only higher demurrage charges but also artificial scarcity of particular classes of goods. All these factors place additional pressure on the prices of goods and services in the local markets, and by extension the indices of local inflation.

GOVERNMENT REACTION

Government's initial reaction to the perceived problem of port congestion was to adopt an essentially fire brigade approach, by giving importers a joint deadline (extended once or twice) to come forward and clear their consignments. Occasionally, where direct appeals through the public media failed to produce the desired result, the NCS occasionally threatened to dispose off uncleared goods and effects by public auction.

Good counsel from interested persons, and more importantly the hue and cry from importers whose goods awaited clearance for extended periods at Lagos ports informed Government to take a more measured approach to the issue. A few months ago, Government extended its deadline to importers to clear their goods and inaugurated a Joint Committee formed by Government and other interested parties, e.g. representatives of the pre-shipment inspection agencies and the importers themselves to work out modalities for easing the problem of port congestion. The committee was headed by a notable Nigerian businessman, noted for his entrepreneurial capacity and extensive business interests, thereby drawing a flurry of complaints from his business competitors. The Committee has submitted its initial recommendations to Government and continues to meet.

With regard to the pre-shipment inspection scheme, we understand that Government has recently declined to renew the contracts of the pre-shipment inspection agents. By implication, if these contracts expire at year-end without renewal, destination inspection will once again be the order of the day, to the delight of its proponents.

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