

**EXECUTIVE SUMMARY**  
**THE NIGERIA CUSTOMS SERVICE ACT, 2011**  
*(Prepared by the Inter-Ministerial Working Group on CEMA revision with assistance by USAID  
MARKETS)*

The Nigeria Customs Service Act, 2011, repeals the existing Customs and Excise Management Act of 1958, as amended (CEMA); creates the Nigeria Customs Service (NCS) as a professional organization under the supervision of the Ministry of Finance and a governing Board; and provides the legal foundation for the use of modern customs procedures such as risk management, post clearance audits, the maximum use of information technology, and special, simplified procedures for authorized traders. In addition, penalties imposed for customs infractions are modernized.

International experience with customs reforms indicates that the new organizational structure and the modern customs procedures and penalty scheme authorized by the Nigeria Customs Service Act, 2011 should substantially increase revenue to the Government, improve trade facilitation and service to the business community, and enhance the protection of society against smuggling, illegal weapons, narcotics, counterfeit goods and other trade related crimes.

**1. CEMA is Out of Date and Should be Revised**

The Nigeria Customs Service is the most important source of revenue to the Federal Republic of Nigeria, except for revenue from petroleum operations.<sup>1</sup> NCS is also the principal agency responsible for enforcing laws at Nigeria's borders, improving trade facilitation, carrying out the Government's trade policy, and protecting society from the smuggling of illegal weapons and narcotics, counterfeit goods, and other threats. However, NCS does not currently have the proper legal foundation for carrying out these important activities using modern technologies and procedures.

***NCS has no existence in law***

Currently, the NCS has no existence in law. CEMA did not create a Customs Service. The Nigerian Customs Service Board Act provides for the administration of the NCS by the Board, but the NCS has no recognized legal existence; rather, it exists as a division of the Ministry of Finance.

---

<sup>1</sup> According to the National Bureau of Statistics, in 2008 merchandise imports amounted to N3.3 trillion; merchandise exports amounted to N9.6 trillion; customs and excise duties amounted to N281.3 billion; customs levies amounted to N72.2 billion; and VAT amounted to N404.5 billion (NCS collects VAT on imports). According to NCS statistics, for the three year period 2006-2008, NCS collected N1.244 trillion in revenue. The NCS' budget during this three year period was N49.7 billion, or approximately 4% of revenue collections.

### ***CEMA does not authorize the use of modern customs technologies and procedures***

CEMA was enacted more than 50 years ago, when Nigeria was still a British colony. It is completely out of date in many important respects. For example, essential modern customs technologies and procedures such as use of information and communications technology (ICT) including use electronic documents, signatures and payments (including e-payments) and information sharing, application of risk management, use of post clearance audits, and application of special, simplified procedures for qualified traders (authorized economic operators), are not authorized in CEMA. Therefore, the use of these modern technologies and procedures by NCS is currently subject to legal challenge.

### ***CEMA does not apply recent international agreements***

CEMA does not provide a proper legal basis for applying important international agreements relating to customs procedures. The World Trade Organization, of which Nigeria is a member, administers a number of customs related agreements concluded since CEMA was enacted, including the Agreement on Customs Valuation, the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS), the Agreement on Import Licensing, and the Agreement on Pre-Shipment Inspection. Similarly, the World Customs Organization (WCO) in recent years has developed the Harmonized System Nomenclature for classifying goods, the SAFE Framework of Standards to improve cargo security and the Revised Kyoto Convention, setting forth international “best practices” concerning customs procedures. Except for the Revised Kyoto Convention, Nigeria is a signatory obligated to apply these agreements but does not implement their provisions in CEMA.<sup>2</sup>

### ***The application of modern customs procedures and international agreements will benefit Nigeria’s economy, reduce poverty and increase food security***

Perhaps the most important reason for replacing CEMA with modern customs legislation is economic. The full implementation of modern customs procedures authorized by modern customs legislation and a revised enforcement regime could substantially increase NCS’ collection of revenue. For example, UNCTAD recently estimated that the full application of the ASYCUDA World customs ICT system and related modern customs procedures increased revenue collections by 47% in East Timor. A 47% increase in revenue collected by NCS could amount to an additional N195 billion/year collected.<sup>3</sup>

---

<sup>2</sup> In some cases, such as the WTO’s Agreement on Customs Valuation and TRIPS, independent legislation implementing these agreements has been adopted. However, these enactments should be updated and consolidated in new customs legislation.

<sup>3</sup> N1.244 trillion revenue collected by NCS for 2006-2008 / 3 = N415 billion/yr. x 0.47 = N195 billion.

Trade facilitation should also be substantially improved. The World Bank currently ranks Nigeria 146<sup>th</sup> out of 183 economies surveyed in the World Bank's "Trading across Borders" annual survey. The average time to export goods from Nigeria is calculated at 25 days, compared to 10.5 days for OECD countries and 5 days for Singapore. The average time to import goods into Nigeria is calculated at 41 days, compared to 11 days for OECD countries and 3 days for Singapore. World Bank economists estimate that each day that shipment time can be reduced increases exports by from 1% to 7%.<sup>4</sup>

- An improvement in export shipment time in Nigeria of 10 days (from 25 days to 15 days, or halfway to Singapore's performance) resulting from full adoption of new customs procedures, could increase Nigeria's non – petroleum exports from 10% to 70%.
- An improvement in import shipment time of 19 days (from 41 days to 22 days, or halfway to Singapore's performance) could increase imports from 19% to 133%, depending upon the time sensitivity of the imported goods.<sup>5</sup>
- The reduction of shipment time for both imports and exports should also substantially reduce shipping costs, making Nigerian exports more competitive in the world market and imports less expensive. Reduced shipping time for food commodities will be essential to quickly remedying food shortages.<sup>6</sup>

***"The loss of revenue to government through smuggling is huge. It is difficult to estimate because nobody has a tab on the value of the items smuggled or those that evade duties through unofficial waivers, which is what these officials offer their families in aiding their illegal activities."***

***- Vanguard, July 20, 2009***

- Improved enforcement by NCS using modern technologies and procedures and a modernized penalty and enforcement scheme should benefit the economy and society by reducing smuggling, other illegal importations and money laundering.

## **Major Features of Proposed Customs Legislation**

***NCS will be created as a legal organization under the supervision of the Ministry of Finance and the Board and operated in an efficient manner to serve its "customers".***

<sup>4</sup> See Stephen Creskoff, Trade Facilitation: an Often Overlooked Engine of Trade Expansion, Global Trade and Customs Journal, vol. 3/1 (2008).

<sup>5</sup> Based on recorded merchandise imports of N3,299,096,620,000 c.i.f. in 2008, a 19% increase equals approximately N627 billion.

<sup>6</sup> See Jon Gambrell, Flooding in Nigeria Worsens Food Shortage, Associated Press (September 28, 2010), [http://www.msnbc.msn.com/id/39384099/ns/world\\_news-africa](http://www.msnbc.msn.com/id/39384099/ns/world_news-africa)

- A Department of Human Resources will be responsible for improving the integrity, professional standards and compensation of customs officers (Parts 1,2)
- Customs officers will have the right to fair compensation and be held to a high standard of conduct (Part 2)

***Collection of revenue by NCS and the enforcement of laws will be substantially improved by the full implementation of modern customs procedures authorized by the proposed legislation. These include:***

- The repression of customs offences by updated penalties and violation procedures based on international best practices (Part 18)
- Use of risk management for customs control to target high-risk shipments and traders for intensive examination while reducing clearance times for self-regulating, low risk traders (Part 4)
- Maximum application of modern ICT systems, including the use of electronic declarations and other documents and advance electronic submission of shipment and passenger information (Part 3)
- Post-clearance audits, including audits to measure compliance levels of traders (Part 4)
- Mutual assistance agreements with other customs administrations to share risk and other information (Part 3)
- Financial guarantees required for most traders to ensure customs debts are paid in full (Part 8)

***Trade facilitation will be improved by the implementation of modern customs procedures authorized by the proposed legislation. In addition to the procedures mentioned in connection with the collection of revenue, these include:***

- Special, simplified treatment for authorized traders (authorized economic operators), permitting the immediate entry of their goods without examination and periodic payments of customs debt (Part 10)
- Close cooperation with the trade, including periodic consultations with trade groups (Part 3)

- Use of a “single window” to eliminate forms and consolidate required approvals and other procedures (Part 3)
- Payments made electronically rather than by cash to reduce the possibility of corruption and increase efficiency (Part 7)
- Mandatory pre-shipment inspections and destination inspections are prohibited after the expiration of current contracts (Part 4)

### **3. Summary of the Principal Provisions of the Draft Customs Legislation (by Part):**

#### **Part 1: Preliminary**

(Establishment of NCS; Definitions)

#### **Part 2: Administration**

(Functions and Powers of NCS; Staff of NCS; Right to Fair Compensation and Anti-Corruption; Establishment of the Board; Financing the NCS)

#### **Part 3: Rights and Obligations of Persons Regarding Customs Information**

(Providing Information to Customs; Obtaining Information from Customs; Use of Information Technology; Consultations with Stakeholders)

#### **Part 4: Customs Controls**

(Risk Management; Post Clearance Audits; Mandatory PSI and DI Prohibited; Documents)

#### **Part 5: Import and Exportation of Goods**

(Goods Declaration; Presentation of Goods to Customs; Temporary Storage; Transit and Transshipment)

#### **Part 6: Determination of Duties, Taxes and Statistics**

(Classification, Valuation and Determination of Country of Origin of Goods)

#### **Part 7: Customs Debt; Payment**

(Payment of Debt; Deferment of Payment)

#### **Part 8: Guarantees**

(Guarantees for Existing or Potential Customs Debt; Form and Choice of Guarantee)

#### **Part 9: Customs Representatives**

(Appointment of Representatives; Licensing)

#### **Part 10: Authorized Economic Operators**

(Customs Simplification Authorized Economic Operator; Security and Safety Authorized Economic Operator)

**Part 11: Customs Status of Goods; Customs Procedures**

(Types of Declarations; Competent Customs Offices; Sale, Disposal or Destruction of Goods; Warehouses; Zones; Temporary Admission; Drawback; Exports)

**Part 12: Coastwise Carriage of Goods; Stores**

(Coastwise Carriage Procedures; Stores Procedures)

**Part 13: Express Shipments; Postal Traffic**

(Express Shipment Procedure; Clearance of Postal Traffic)

**Part 14: Import Remedies [Reserved]**

(This Part has been omitted pending the development of legislation implementing the relevant WTO and ECOWAS agreements regarding import remedies.)

**Part 15: Travelers; Duty Free Shops**

(Facilitation of Travelers; Duty Free Shops)

**Part 16: Intellectual Property Rights**

(Applications to Suspend Importation, Exportation and Transit; Duration of Assistance; Right of Inspection and Information)

**Part 17: Excise Taxes**

(Imposition of Excise Tax; Spirits; Beer; Tobacco; Other Goods; Licenses; Books and Records)

**Part 18: Offences**

(Power to Investigate Offences; Offences Subject to Criminal Penalties; Offences Subject to Civil Penalties; Penalty Procedure and Administrative Settlements; Legal Proceedings)

**Part 19: Appeals**

(Right of Appeal; Appellate Procedure; *Sua Sponte* Redeterminations)

**Part 20: Final Provisions**

(Rewards; Repeal and Saving Provisions)