PAPER

ON

EXPERIENCE OF SHIPPERS' ON NON-PAYMENT OF EXPORT PROCEEDS

Prepared and Presented

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AT A ONE-DAY STAKEHOLDERS INTERACTIVE FORUM ON EXPORT PROCEEDS RECOVERY THROUGH CARGO DEFENCE FUND (CDF)

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INTRODUCTION

The issue of "Payment" is central in International Trade. The seller who parts with his goods looks forward to the receipt of the full payment at the right time, **without default**.

The importer buying the goods and making the payment is concerned about the assurance of **value for money.**

Both the exporter and the importer try to address their concerns/interests/assurances, otherwise known as **risk**, by mutually agreeing on **the detailed terms of the commercial contract, stipulating the documentary requirements and the method and terms of payment most suitable to them**.

PAYMENT SYSTEMS

The main factor in considering how an exporter expects to be paid for an export transaction is the potential risk that both the importer and the exporter are willing to face between themselves. The basic payment systems or methods, arranged from the least secure to the most secured, from the exporter's point of view and vice versa are:

- ❖ Open Account
- ❖ Bills for Collection
- ❖ Documentary Letter of Credit
- ❖ Cash in Advance (Advance Payment)

PAYMENT RISK LADDER

EXPORTER	Least Secure	Less Secure	More Secure	Most Secure
PAYMENT METHOD	OPEN ACCOUNT	BILLS FOR COLLECTION	DOCUMENTARY CREDITS	ADVANCE PAYMENT
IMPORTER	Most Secure	More Secure	Less Secure	Least Secure

OPEN ACCOUNT

Under Open Account, the exporter sends the goods and all the shipping documents direct to the buyer with a request for payment on the agreed date.

Open Account is the least secured method of payment to the exporter but most attractive to the importer. It is more regularly used in **low risk markets**. Open Account trading is recommended only when an exporter is sure that payment will be received.

The financial risk can be mitigated by taking an insurance policy.

In Nigeria, Open Account mode of payment for import has been abolished since 2003 because of abuses observed.

BILLS FOR COLLECTION

Bills for Collection involves the use of negotiable instruments i.e. bills of exchange or drafts, in effecting payment. A Bill of Exchange is an unconditional order in writing, addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a determinable future time, a sum certain in money to or to the order of a specified person, or to bearer (Bill of Exchange Act).

The security which Bills for Collection offer to the exporter is based on the fact that the trade documents, which contain specific instructions that must be obeyed, are usually sent by the exporter's bank to the importer's bank after shipment of the goods.

Should the importer fail to comply, the exporter does, in certain circumstances, retain title of the goods, which may be recoverable.

Involvement of the banks in arranging for collection of payment from the overseas buyer on behalf of the seller also provides a useful communication route through which disputes are resolved.

There are two types of Bills for Collection (**Documents Against Payment and Documents Against Acceptance**) which are usually determined by the payment terms agreed within a commercial contract.

Documents Against Payment (DP) – The overseas bank will require the buyer to pay the due amount at sight of the documents. This provides security to the exporter in that the bank will not release the documents to the buyer unless payment is made. Also known as Cash Against Documents.

Documents Against Acceptance (DA) – Here a credit period is agreed between the exporter and the buyer.

The trade documents are usually accompanied by a “Draft” or “Bill of exchange”. When the buyer (drawee) agrees to pay (accept) the draft at maturity, the documents are released.

The Bills for Collection process is governed by a set of rules, published by the International Chamber of Commerce, called “Uniform Rules for Collection” document No. 522 (URC 522).

DOCUMENTARY CREDIT (Letter of Credit)

Some concepts: Applicant, Issuing bank, Negotiation, Nominated bank, Presentation, Presenter/beneficiary.

The concept Documentary Credit refers to any arrangement, however named or described, that is irrevocable and thereby constitutes a definite undertaking of the issuing bank to honour a complying presentation –

International Chamber of Commerce (ICC), Paris, Uniform Customs and Practice (UCP) 600 (2007 Revision).

The Documentary Credit or Letter of Credit (LC) is an important and very common method of payment in international trade, primarily because of the security it offers to the exporter. However, the security of the irremovable bank guarantee/undertaking is tempered by the documentary conditions imposed.

In very simple terms, a Letter of Credit is a letter from a bank promising to pay an amount of money to an exporter on behalf of an importer, only if the specified conditions are met and the stipulated trade documents are provided by the exporter. In this respect, a L/C is a very conditional agreement.

Different Types of LCs include:

- Irrevocable/Revocable LC
- Confirmed/Unconfirmed LC
- Transferable LCs (Back To Back LCs)
- Revolving LC
- Stand-By LCs
- Deferred Payment LCs – To avoid stamp duty charges on bill or draft, no draft/bill is included in the list of required documents.

ADVANCE PAYMENT

This is the most secured method of payment for the exporter. It is because of exporters perceptions of increased credit risk in world trade and the fact that they do not regard LCs as an absolute guarantee.

Also, in cases of large projects, it is not unusual for a percentage of the payment to be made in advance, the balance often being paid in installments.

Irrespective of the traditional and accepted methods of payment in a particular market, the seller's decision on the method of payment would depend on such factors as the exporter's source of funding/financing of the exported good, perception of the buyer's risk and competition in the market, amongst others.

In Nigeria, payment for all exports from the country shall be by letter of credit, bills for collection, advance payment and/or any other approved international mode of payment.

EXPORT PROCEEDS REPATRIATION

The CBN Foreign Exchange regulations requires that all exporters (oil and non-oil) open an Export Proceeds Domiciliary Account with the processing bank in Nigeria and ensure that the export proceeds are credited to this account within 180 days from the date of shipment of the goods.

Repatriation of export proceeds into the foreign exchange market of a country impacts positively on the quantity of foreign exchange available (i.e. the forex supply) in that market.

PROBLEMS

Both the Foreign Exchange (Monitoring and Miscellaneous Provisions) Act 1995 and the Pre-Shipment Inspection of Exports Act No. 10 1996 have mandated the CBN to monitor the repatriation of export proceeds.

The problems encountered by the CBN in carrying out this mandate can be classified into five: namely, problems that are exporter related, bank related, inspection agent related, shipping companies related and problems of collaboration.

Exporter related Problems:

Some exporters do not usually take pains to complete all the relevant sections of the Nigerian Export Proceed (NXP) form; and in some cases where they were completed, the information is either not detailed or correct. Banks should always insist that the Exporters complete **all sections** of the NXP forms before the forms are processed.

Some exporters indulge in informal export and either fail/refuse to repatriate the proceeds into the parallel market; instead of into their domiciliary account, which is part of the formal foreign exchange market.

Sometimes exporters do not comply with the key terms of the contract relating to documentary requirements, quality and quantity. This practice can result in issuance of Non-Negotiable Certificate of Inspection by the inspecting agencies and trade dispute, which often lead to litigations, delay or non-payment for the goods or even destruction/seizure of the goods in foreign countries.

Instances where some banks alleged that stamps and signatures appended on NXP forms were not those of their staff. The implication of this is that both the stamps and the signatures were forged, in a bid to send goods out through borders and seaports.

Under declaration and overstatement of the value of goods being exported.

Non-compliance with the Export Guidelines e.g. export of goods without subjecting them to the requirement of pre-shipment inspection and issuance of Clean Certificate of Inspection (CCI) before export.

Bank related Problems

Original Nigerian Export Proceeds (NXP) Forms are often not attached to the returns rendered by the banks on export proceeds repatriation.

Non-certification and authentication by the schedule officers of the banks under Section 9 of the NXP form.

Copies of the swift advice are sometimes not attached to returns; and even when they are attached, they often do not contain vital information, such as the number of the relevant NXP Form and the name of the exporter, etc.

In some cases, banks' schedule officers fail to complete and stamp Section 6 of the NXP Form (i.e. Details of Collecting/Negotiating Bank in Nigeria).

In cases where lump-sum payments are received for several NXP forms, the lump sum in the swift message is used to certify receipt of export proceeds on each of the NXP forms instead of the individual FOB values of each form.

Sometime banks delay or even fail to render the appropriate proceeds repatriation returns to the CBN, as required.

Some banks have not built the required capacity of their staff at the branch offices. The result is that export transactions are not usually processed at those branches.

Some banks fail to distribute NXP forms to their branch offices, thereby making it impossible for export transactions to be executed at such branches.

Inspection Agent related:

- ❖ Carrying out inspection without NXP Form;
- ❖ Delay in issuance of Clean Certificate of Inspection (CCI).

Shipping Company related Problems:

- ❖ Shipping consignments without CCI
- ❖ Failure to provide shipping manifest to PIA

Problems of Collaboration

Several government agencies are involved in processing export transactions and incentives. These include the Nigeria Customs Service, NAFDAC, Produce Inspection Division of the Federal Ministry of Agriculture, the CBN, etc.

Where the output of one organization goes as input of others, delay often results in avoidable costs or affects the accuracy of export shipment statistics.

For example, delay in the distribution of NXP forms to the relevant agencies may result in inaccurate export shipments statistics, delay in payment of export incentives, which will discourage exporters in expanding/growing the export business, with attendant adverse effect on the country's foreign exchange earnings.

Refusal/Non-submission of copy of Cargo Manifest to Cobalt Int. Services Ltd. by carriers hampers effective monitoring of export proceeds repatriation.

PROFFER SOLUTIONS

It is advised that:

(1) The Exporters must be patient and bear in mind that exportation is a process and not a transaction.

(2) Exporters should have current knowledge and follow religiously all necessary export procedures and documentations in all their export transactions to enjoy maximum benefit and successful repatriation of all their export proceeds.

(3) Government through its specialized Agencies should constantly up date and inform Exporters on current developments in the export sector through massive enlightenment programmes at Local, State and National levels so as to enable exporters cope with the challenges of the business.

(4) Government should initiate and articulate good policy framework that will eliminate bottlenecks in accessing the export incentive schemes to enable more exporters benefit from them.

(5) Exporters should carry out all their export transactions through the Banks to avoid loosing Funds and to be able to benefit from grants provided by Governments through its Agencies.

(6) Exporters should adhere strictly to all the stipulated payment modes in international trade to ensure successful repatriation of export proceeds.

(7) Banks as a matter of urgency should establish Export Desks in all their Branches nationwide so as to assist exporters in their export transactions.

(8) Exporters should carry out their business with honesty, sincerity and strong respect for all the parties involved so as to sustain mutual trust and cooperation for economic survival and development of the nation.

(9) Exporters should ensure they cover their goods with Institute Cargo Clause A (ICC “A”) which insures the assured against all risks in their export business.

(10) Exporters should endeavour to insure their export cargo with local underwriters from whom it would be easier to obtain indemnity in the event of loss.

(11) Exporters should ensure direct supervision of their export transactions to avoid being defrauded.

(12) Exporters should add value to their products by processing them before export in order to make more profit on sale.

(13) Government should as a matter of policy sponsor some local industrialists/manufacturers abroad for exposure in their various lines of business to meet up with international best practices.

(14) Government should re-introduce COMMODITY BOARD or ASSOCIATION to sell products to correspondent partners overseas without meddling with the price.

(15) There is urgent need to earmark one or two ports for export of Made-In-Nigeria Goods, Agricultural Products and Solid Minerals as it has been promoted by Oyo State Shippers’ Association (OYSSA) for years. When the Inland Dry Ports and Border Markets are operational, goods produced at the Export Processing Zones

(EPZ) near the Dry Ports and Border Markets will be stuffed in empty containers used for import to export our goods without delay being caused at the Ports that reduced the value of quality of the products. Ports for export will create more jobs, promote technology, government will earn more revenue and keep the Dry Ports busy for business.

FEDERAL GOVERNMENT OF NIGERIA'S ASSISTANCE TO SHIPPERS

Due to the relevance of shippers to the economic growth of Nigeria, the Federal Government established an agency called Nigerian Shippers' Council (NSC) under Federal Ministry of Transport to protect the interest of Nigerian Shippers and assist to deal with:

- Ship Owners
- Insurance Companies
- Ports Authority
- Terminal Operators
- Other groups in the shipping industry.

Its job is to ensure that importers and exporters enjoy good service and adequate protection in matters concerning:

- Favourable Ocean Freights
- Local Shipping Charges
- Marine Insurance Claims on Lost or Damage Cargo
- Charge and Demurrage
- Other Unfair Practices in the Maritime Industry.

In furtherance to assist the shippers, the NSC has also set up two units in the organization namely:

1. Shippers' Complaint Handling Services: to deal with and resolve local complaints
2. Cargo Defence Fund: to deal with and resolve international complaints.

As for today's forum, Cargo Defence Fund (CDF) will be our reference point.

CDF is to tackle successfully, problems associated with the abandonment of legitimate cargo claims. The Fund seeks to assist Nigerian Shippers' in the pursuit of their claims recoveries and legal remedies.

When you become a subscriber to CDF, among other benefits accrued from the Fund are:

(i) Provision of **Standard Form Contracts for Import/Export Trades**

(ii) Hosting **The International Trade Dispute Resolution Centre (ITDRC)** at Shippers' Tower, 4, Otunba Ayodele Soyode Lane, Apapa G.R.A., Lagos, Nigeria. It will facilitate the amicable resolution of all manner of disputes arising from or related to International Trade by adopting various Dispute Resolution Processes as appropriate.

CONCLUSION

Exporters are implored to pay more attention to their quality specifications so that they do not lose part or entire friends in transactions and add value to products to generate more profit.

All the stakeholders, ranging from the exporters, the banks, the government/regulatory authorities, carriers/their agents and the general public are to build adequate capacity, efficiently and effectively play their roles by adhering to the rules and regulation, to enable Nigeria take her place of pride among the giants of export trade.

Thank you and God bless.