



# Regulatory Alert

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## The Nigeria Customs Service Act

His Excellency, former President Muhammadu Buhari, GCFR, signed the Nigeria Customs Service Act, 2023 (“the Act”) into law on 20 April 2023, following its passage by the National Assembly. The Act repeals the Customs and Excise Management Act (CEMA) and other pieces of Legislation relating to Customs and Excise and provides the legal and institutional framework for the reform of the administration and management of customs and excise in Nigeria.

The Act includes provisions that will enable the Nigeria Customs Service (NCS or “the Service”) to meet its key objectives such as generation and collection of revenue, prevention and suppression of smuggling, collaboration with other relevant agencies, facilitation of international trade and economic development.

We have highlighted some of the key changes introduced by the Act below:

### 1. Establishment of a Governing Board for the Service

Section 7 of the Act establishes a Governing Board (“the Board”) tasked with formulating general policies, guidelines, and regulations for the Service in order to improve its operating procedures, review and approve the strategic plans of the Service, provide an enabling environment for collaboration and synergy with other relevant government agencies, and ensure effective discharge of its mandate in line with the provisions of the Act. The Board consists of the Minister of Finance as the chairman, the Comptroller-General as the deputy chairman, and other members as provided in the Act.

The establishment of a Governing Board separate from the management team aligns with the Federal Government (FG)’s commitment to improving corporate governance and effectiveness of its agencies. This is expected to improve accountability and decision making and provide transparent delegation of duties for an effective management of the Service.

### 2. Establishment of Management Committee

Section 14(5) of the Act establishes a Management Committee (“the Committee”) consisting of the Comptroller-General, all Deputy Comptroller-Generals, all legal advisers, all Assistant Controller-Generals, and a secretary. The functions of the Committee include supervision and coordination of the operations of the Service, provision of opinion to the Board on all customs matters that require technical and professional input, collation and continuous review of all government policies on customs and excise matters relating to revenue generation, enforcement of disciplinary regulations on misconduct of its officers in line with the provisions of the Act.

### **3. Funding of the Service Operations**

Section 18 of the Act provides the following sources of funding for the Service:

- i. 4% or more of the free-on-board value of imports;
- ii. revenue derived from assessments and collection of cost-based user fees (which shall be determined by the Board and approved by the FG);
- iii. appropriation and/ or extra-budgetary allocation from the Government; and
- iv. grants, aids, or donations from local or international development partners.

The Act provides that the President may, upon the recommendation of the Board based on verifiable and cogent factors from the Service, approve for an increase in the percentage in *item i* and present same to the National Assembly for ratification.

Further, the Act mandates the Service to publish the tariff regime/ duty and excise computations approved by the National Assembly both in its tariff handbook and on its website.

Section 21 of the Act requires the Service to keep proper accounts and records of its operations in line with the guidelines provided by the Auditor General for the Federation.

### **4. Application for Advance Ruling and Ruling of General Application**

Section 24 of the Act provides for any importer to apply to the Service for an advance ruling in respect of the tariff classification of any goods, compliance with applicable regulations, duty exemption, applicable customs valuation methodology, duty drawbacks, quotas fees or other customs related matters.

The Act requires the Service to issue its advance ruling, under a prescribed format, immediately or not later than 150 calendar days (i.e., 5 months) from the receipt of the application. The advance ruling, which shall be binding only on the Service and the requesting party, will be in effect within the fiscal year that it was issued. The Act also provides that the Service may, upon reasonable notice to the applicant in writing, withdraw the advance ruling.

Further, the Act empowers the Service to issue rulings of general application which must be published on its website and other online portals. Rulings of general applications shall apply prospectively and become effective 30 days after publication, except where the Service deems that an immediate effective date is expedient.

### **5. Customs Service Controls and Control Zones**

Section 30 of the Act provides that the Service shall carry out necessary controls to ensure compliance with the provisions of the Act. The controls stated in the Act include examination of goods, collection of samples, data verification and authentication, examination of accounts of traders, inspection of means of transportation, collection of customs related data from foreign customs administration, government and other relevant stakeholders, etc.

The above control activities are to be carried out within the confines of the *customs control zone*. The Act empowers the Board to designate areas within and outside the customs territory as *customs control zones* for the purpose of enforcing the provisions of the Act. The Act also empowers the Comptroller-General to establish a temporary customs control zone, subject to approval of the Board, for disaster relief operations or in a situation where the nature of a cargo to be inspected cannot be reasonably facilitated at a conventional customs control zone.

## **6. Cooperation with Relevant Authority and Mutual Administrative Assistance**

Section 33 of the Act requires the Service to put control measures in place that will foster collaboration with the control measures of other agencies to ensure an efficient and expedient operations relating to importation and exportation of goods. However, the Act provides that the Service will lead the timing of inspections and other controls where other agencies are involved.

Section 34 of the Act provides for the Service to cooperate with the customs administration in other jurisdictions where necessary. This includes concluding Mutual Administrative Assistance Agreements and exchange of data in relation to entry, exit transit, transfer and use of imported or exported goods, persons and means of transport to improve customs controls and ensure compliance with the provisions of the Act.

## **7. Valuation of Goods**

Section 69 of the Act provides that the primary basis for the customs value of goods shall be the transaction value. The Act defines transaction value as *“the price paid or payable for the goods when sold for export into the country, including all payments made or to be made as a condition of the sale of the imported goods, in line with the provisions of Articles 8 of the Agreement on Customs Valuation”*.

However, the transaction value shall not apply where the buyer and seller are related (as defined in the Section 69(5) of the Act) and the Service has reasonable grounds to believe that their relationship has influenced the prices of the goods; or the sales/ price is subject to some conditions or considerations which make it difficult to determine the price of the goods.

Further, where the transaction value of a good cannot be determined, the value of an identical or similar goods imported into Nigeria at the same time will be applied.

## **8. Rules of Origin**

The Act establishes the rules of origin for the purpose of applying preferential and non-preferential rules. Based on the Act, goods wholly obtained in a single country or territory shall

be regarded as having their origin in that country or territory, while goods whose production involves more than one country or territory, the country or territory where they underwent their last substantial transformation shall be deemed as the country of origin. A good is deemed “*substantially transformed*” where it becomes a new and different product as a result of manufacturing operations.

Goods that originate from members of the Economic Community of West African States (ECOWAS) and other countries to which the Nigerian Government has concluded a preferential trade agreement shall be subject to the preferential rules of origin, while non-preferential rules of origin shall apply to other goods, except where Nigeria has applicable international agreement or unilateral action with the government of the originating country.

## 9. Other Notable Changes

- Powers to conduct post clearance audit to ensure compliance, conformity to standards and other purposes of goods imported into Nigeria.
- Collaboration with customs administrations of countries that share borders with Nigeria to enhance revenue collection and compliance with international trade rules and best practices.
- Clarification on the documentation requirements for the admission of goods into Special Economic Zone (SEZ) and procedures for admitting goods from the SEZ into customs territory.
- Basis for the imposition, computation, collection and administration of excise duties on excisable goods.
- Procedures for “*transire*” which allows for goods to pass through or across one customs zone to another.
- Exemption of stores (goods intended for consumption by or sale to passenger or crew on board a vessel or aircraft and goods required for operation and maintenance of a vessel or aircraft) from the payment of duties, excise customs duties and other customs duties provided that it is retained on board the means of conveyance, and the quantities are deemed reasonable in respect of the number of passengers and crew, and the duration of stay of the vessel/ aircraft.
- Procedures for temporary admission of goods from non-ECOWAS countries intended for re-export, including timelines and extensions for such temporary admission.
- Definition of penalties and fines for non-compliance with the provisions of the Act.
- Introduction of a stricter warehousing procedures and control measures, including stiff fines and penalties for non-compliance.

## Commentary

It was obvious that the provisions of the erstwhile CEMA had become inadequate to address pertinent issues in the excise and customs space. The Act, therefore, provides robust legislative amendments that will address these issues, including reforming the administration and management structure of customs and excise operations in the country, and positioning the Service to be dynamic and financially stable to carry-out its functions and mandate under the Act. The Act also aligns the Service's procedures with international best practices as stipulated in the World Trade Organization, World Bank, United Nations, and the World Customs Organization Risk Management Compendium, and is expected improve the effectiveness and efficiency of the Service.

However, there is an urgent need to reconsider the 150 days it will take for the Service to issue an advance ruling on tariff classification and valuation of goods. In most jurisdictions, such decision is issued within 90 days of application. The service may also need to make changes to its technology system to support this initiative and make the application seamless. Effective monitoring and evaluation of the process will be critical for its success.

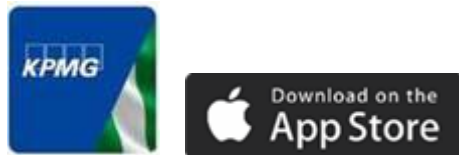
We will publish our detailed newsletter on the Act, including the impact of the new provisions on manufacturers, importers, exporters, and their customs representatives in Nigeria.

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