

« THOUGHT LEADERSHIP »



ACI's 6th Global Forum on Anti-Corruption
Compliance in High Risk Markets

Trade Compliance: How to identify Customs and
Supply Chain Risks when working with Agents and
Customs Brokers in Indonesia & Nigeria:
The Nigerian Case Study



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American Conference Institute

Opening Nuggets

- Any activity or condition that may indicate an increased risk for, possible violation of, law or company policy is a “Red Flag”
- The country you operate in and the industry/activity you are involved in can increase your risks and indicates a potential “Red Flag”
- Indonesia and Nigeria are high risk and “Red Flag” countries. According to Transparency International, Corruption Index in Indonesia is 107 and Nigeria is 136
- The requirement to use Customs Brokers and Agents to transact business on your behalf heightens the risks of corruption and this is a potential “Red Flag”
- Moving from high risk to clean/low risk country takes time and massive reforms

Is Nigeria Moving from high risk to low risk? Lessons from Transparency International Corruption Index 2014

RANK	COUNTRY	2014 SCORE	2013 SCORE	2012 SCORE
1	Denmark	92	91	90
2	New Zealand	91	91	90
3	Finland	89	89	90
4	Sweden	87	89	88
5	Norway	86	86	85
5	Switzerland	86	85	86
7	Singapore	84	86	87
8	Netherlands	83	83	84
9	Luxembourg	82	80	80
10	Canada	81	81	84
11	Australia	80	81	85
12	Germany	79	78	79
17	United States	74	73	73
107	Indonesia	34	32	32
136	Cameroon	27	25	26
136	Iran	27	25	28
136	Kyrgyzstan	27	24	24
136	Lebanon	27	28	30
136	Nigeria	27	25	27
136	Russia	27	28	28

Transparency International Corruption Perceptions Index (CPI) (Nigeria) 2005 – 2014

YEAR	RANK	SCORE	COUNTRIES	PERCEPTION TREND
2014	136	2.7	175	Statistically significant improvements were recorded in Nigeria's CPI in 2005 and 2008. However, overall, only minimal improvements have been made over the last 10 years and TI CPI continues to show Nigeria to be in the class of corrupt countries.
2013	144	2.5	177	
2012	139	2.7	176	
2011	143	2.4	183	
2010	134	2.4	178	
2009	130	2.5	180	
2008	121	2.7	180	
2007	147	2.2	180	
2006	142	2.2	163	
2005	152	1.9	159	

Anti – Corruption Laws

- **Nigerian Laws**
 - Criminal Code – creates offences relating to corruption and abuse of public office
 - The Corrupt Practices And Other Related Offences Act 2000 – creates offences relating to giving or accepting gratification through agents
 - The Code of Conduct for public officers – forbids a public officer from asking for or receiving property or benefits of any kind for himself or any other person in the discharge of his duties
- **Foreign Laws**
 - The US FCPA - makes it a criminal offence for a director, employee, agent or any third party acting on behalf of a US domestic concern or SEC registrant to make payments for the purpose of influencing foreign officials. Foreign nationals can be held liable for violations if they are employees or agents of US companies, or for conduct they undertake within the US that furthers a corrupt payment.
 - The UK Bribery Act 2000 – creates offences relating to UK companies operating abroad and overseas companies with presence in UK for offering, promising or giving of an advantage, and requesting, agreeing to receive or accepting of an advantage; bribery of a foreign public official and failure by a commercial organisation to prevent a bribe being paid to obtain or retain business or a business advantage.

Dealing With Nigerian Customs Officials, Agents & Brokers: **The Red Flag Zones**

- The setup of the system lends itself to corruption
 - The requirement to pass through customs brokers and agents to obtain certain permits and licences creates opportunity for corruption
 - Discretionary waivers are easily abused as opportunity for extortion, patronage, nepotism, embezzlement and kickbacks
 - Poor ports infrastructure creates congestions at the ports and induces payment of bribes to guarantee accelerated completion of customs clearance procedures
 - High duties and tariffs have led to resort to undervaluing goods or non-declaration of goods to evade duties
 - Proliferation of government agencies at the ports increases paper work and creates congestions at the ports and induces payment of bribes to guarantee accelerated completion of customs clearance procedures
 - Lack of transparency about proper processes and procedures as well as official fees when applying for licences and permits creates opportunities for corruption

Prosecutions for FCPA Violations when working with customs agents & brokers in Nigeria (2002 – 2007)

S/N	Company	Charges	Settlement
1.	Panalpina	Improper payments to customs officials through customs brokers/agents	Paid approx. \$81.3m in disgorgement & criminal penalty to US SEC
2.	Tidewater		Paid approx. \$16m in disgorgement, penalty & criminal fine to US SEC
3.	Transocean		Paid approx. \$21m in disgorgement, interest & criminal fine to US SEC
4.	GlobalSantaFe		Paid approx. \$5.8m in disgorgement & criminal fine to US SEC
5.	Shell		Paid approx. \$48m in disgorgement & criminal fine to US SEC

Practical Tips to avoid making Improper Payments

- Engage a reputable accredited customs clearing agent:
 - A List of accredited clearing agents is available on the Nigerian Customs Service (NSC) website (<https://www.customs.gov.ng>).
 - Customs duties and tariffs may be certified from the NCS website <https://www.customs.gov.ng>)
- All required document relating to the goods should be made available to the clearing agent on time to avoid delay
- All payments should be by certified cheques payable to the Federal Government of Nigeria through the approved designated banks.
- Demand official receipts for all payments
- Proper identification and description of goods consistent with the description in the **CET TARIFF - ACT NO. 4** as duties are assessed according to description of goods
- Declare all goods and leave nothing out to ensure speedy clearance and payment of the appropriate duties
- Know the current import & export prohibited lists

How To Prepare Management For Potential Delays And Work With Officials To Expedite Permits and Clearance Without Paying Bribes

- **PATIENCE & DIALOGUE**

In cases where the refusal to pay bribes leads to delays. The company must ensure that it does not succumb to the pressures and pay these bribes. Patience must be exercised in all circumstances.

The company must ensure that it is able to resolve the issues by dialogue with the NCS hierarchy and if necessary the Ministry of Finance without going against the law.

- **ENTER A COMPLAINT**

Complaints can be made with the NCS Public Relation Officer (PRO) on Tel: +234-9-5234694. Where a complaint has been entered the PRO would usually advise or intervene on behalf of the complainant.

- **TRAINING & ENFORCEMENT OF SANCTIONS**

Train regularly the critical vendors/service providers that interface with government agencies on behalf of the company on the company's anti-corruption and compliance policies. Breaches of the company's anti-corruption policies should be sanctioned and reported to law enforcement agencies promptly. It is permissible to extend such trainings to customs officials and other government agencies.

Case Studies

1. You have equipment in Nigeria that needs to be processed quickly by customs officials. You have submitted all required documents and paid all applicable duties. Yet your agent tells you that a customs official is refusing to clear the goods until he receives \$100 or else you will face significant delays and costs. What do you do?
2. You just won a lucrative contract in Nigeria and you need to import equipment temporarily to execute the contract. Your agent tells you the customs official will charge only \$100 cash to expedite the processing of the temporary import permit, You are required to export the equipment after the contract or the expiration of the permit but you need the equipment urgently for another job and your agent says he can get a waiver for you to complete the new contract if you pay another \$100 to the customs officials. What do you do?
3. You are a telecoms company and your consignment of equipment is being held up because you gave the wrong description of the goods resulting in higher import duty being chargeable. Your agent tells you that the customs official is willing to waive the payment of the excess duty if you pay 10% of the value of the excess duty. What do you do?