

TEXT OF A PRESENTATION ON THE ROLE OF THE NIGERIAN SHIPPERS COUNCIL IN THE MARITIME AND TRANSPORT SECTORS DELIVERED BY CHIBUZO C EKWEKWUO AT THE OCCASION OF THE 14TH INTERNATIONAL MARITIME SEMINAR FOR JUDGES HOLDING FROM 31ST MAY -1ST JUNE 2016 AT SHERATON HOTEL ABUJA NIGERIA.

Permit me My Lords to stand on the protocols already established.

Introduction

To discuss the role of the Nigerian Shippers Council in the Maritime and Transport Industry in Nigeria, One perhaps needs to first take a look at both the history behind the establishment of the Shippers Council, the statutory functions imposed by its establishment Act and regulations issued pursuant to that Act in order to deduce not only the rationale behind its establishment but also its statutory mandate. On the other hand, an examination of its current service, initiatives and efforts should bring to the fore, its actual day to day role in the maritime and transport industry. Thus I will attempt to do both in this session, in the hope that I can capture not only its intended role, but more importantly, its actual role in practice.

Background.

Prior to 1978 Shipping in the African Region and indeed in many third World countries suffered from deteriorating quality of shipping services and unmitigated increases in Ocean freight rates ranging from 25-30% per annum. In the case of Nigeria and indeed the West African Sub-Region the Ship owners were all foreign, acting under three notable cartels or Shipping ranges otherwise called Shipping Conferences. Specifically the United Kingdom West African Line (UKWAL); the Continental West African Lines Conference (COWAC) and the American West Africa Freight Conference (AWAFC). The freight increases by these organized shipping pressure groups were often accompanied by stifling freight surcharges they imposed on service users. The consequences included huge forex outflows

and negative balance of payment positions for countries in our region including Nigeria.

The outcry from many third world nations including Nigeria regarding this situation attracted attention and intervention of the United Nations Conference on Trade and Development (UNCTAD). UNCTAD's intervention and engagement with this issue resulted in the issuance of a UN Code for Liner Conferences in 1965. The Code was intended to better modulate and regulate the trade practices of these shipping cartels. This code recommended the formation of National Shippers' Councils in developing countries to act as a countervailing force against the excesses of foreign ship owners and other shipping services providers. This was the beginning of the establishment of National Shipping Councils in the third World.

UNCTAD identified two important objectives for these National Shipping Councils:

The first was to unite in-country Shippers and give them the necessary bargaining strength to obtain adequate and efficient services at minimum cost from the Shipping service providers;

The second was to provide ship owners, government agencies and port authorities with the means and channels of communicating with shippers, and of obtaining an authoritative shippers report¹.

However the endorsement of this UNCTAD recommendations for formation of National Shippers Councils by governments came in UNCTAD's New Delhi Conference of 1968. The First Shippers Council in Africa was established by Cote D' Ivoire after this declaration in 1968. Nigeria started implementation of these recommendations ten years later in 1978 through the enactment of Nigerian Shippers' Council Act now Cap. N133 LFN 2004.

Rationale for Establishing the Nigerian Shippers Council

¹UNCTAD Convention on A Code of Conduct for Liner Conferences, 1975.

It is important to identify the reasons Nigeria accepted and began implementations of the UNCTAD recommendations. This is because they contribute to our understanding of the role of the Nigerian Shippers Council as originally envisioned. First is that Pre- 1978 International Shipping Companies and Shipping Service providers operating in Nigeria were organized & financially strong and therefore had a strong bargaining position. On the other hand Nigerian Shippers (Importers and Exporters/Cargo Owners) were extremely weak, fragmented, unprotected and left at the mercy of the shipping services providers. There was therefore great need to organize Nigerian Shippers and intermediate on their behalf to strengthen their voice and bargaining power and protect Nigeria's cargo interests in shipping and international trade from abuse and exploitation. This meant there was need to ensure that cargo tariff structures are fair, equitable and stable, and also a great need to provide researched inputs to Federal Government policies on shipping & international trade².

It is evident from the above that both protection of Shippers interest , regulation of tariff's and charges and standards of services in the sector, which in current parlance is largely referred to as Economic Regulation were part of the justifications for Nigeria accepting and implementing the UNCTAD recommendations. Thus the concept of Economic Regulation and Shippers Council role in it is not entirely new.

Statutory Mandate of Shippers Council

Section 3 of the Nigerian Shippers Council establishment Act sets out the functions of the Nigerian Shippers' Council. The substance of these provisions restated in concise form will include;

- ✓ Protection of Shippers interest in matters affecting exports from and imports into Nigeria
- ✓ Promoting stakeholder consultation, negotiations, consensus and agreements on **service standards, rates and other charges.**

² Nigerian Shippers Council 2015

- ✓ **moderation and stabilization of costs (freight rates, port charges, local shipping charges, haulage charges etc.);**
- ✓ Practitioners education and enlightenment on international trade issues both at the macro and micro levels;
- ✓ regular and reliable advice to the Federal Government on matters affecting the shipment of goods to and from Nigeria.
- ✓ to promote **efficient and timely delivery of shipping services to importers and exporters by shipping services providers under the most economical arrangements;**
- ✓ Intermediation and moderation in resolution of stakeholder disputes and complaints

But It would appear that the Nigerian Shippers Council had at inception like other Shippers Councils in the sub-Region interpreted its mandate narrowly. They appeared to focus on representation and protection of interests of importers and exporters (Shippers) in relation to port-to-Port cargo shipment. However this began to change from 1997. The Cotonou II World Bank Round Table Conference on Maritime Trade in West and Central Africa in that year recommended amongst other things, that Shippers' Councils in the sub-region should intervene on behalf of importers and exporters throughout the transport chain, including land transportation.

Thus rising from this conference Shippers Councils in the Sub-region acquired a broader view of their mandate³. However in the Case of NSC, its establishment Act had already given it a mandate broader than the initial narrow focus of its peers. What it lacked in coercive powers, it appeared to have been compensated in a broad view of its intervening area. The language of Section 3 (a) of the Act illustrates this point. Section 3(a) had allowed the NSC to intervene to proactively **protect the interest of shippers in matters affecting the shipment of imports and exports from Nigeria**. Thus any matter affecting shipment of imports and exports would be an issue on which the NSC can intervene. If therefore in-country

³Cotonou R5 – Mission and Role of Shippers' Councils (EC-DG VIII).

land transportation is seen to affect the interest of shippers of export and import from Nigeria, then inland transportation is an issue on which the Nigerian Shippers Council could have intervened *ab initio*, likewise if standards of service or charges or models, structure of and monitoring of PPPs in the sector in any sense affected the interests of Shippers (importers and exporters) then they will be issues on which the NSC can and should intervene. The implication is that these were issues on which the Shippers Council could intervene. However the extent of intervention hitherto possible before the Economic Regulations of 2015 and after is another issue. This of course can only be determined by the extent of powers granted in the establishment Act, and the accompanying regulations.

Additional Roles for the Nigerian Shippers Council.

Section 4 of the Nigerian Shippers Council Act Laws of the Federation 2004 authorizes the Minister of Transport to give the NSC directives of a general character or pertaining to particular matters regarding the exercise by the Council of its functions. In effect the Minister may determine the manner and extent to which the Council will perform these functions. In Section 9 the Act empowers the Minister to make regulations generally for **carrying into effect the provisions of the Act**. Since inception five such regulations have been made as follows:

- ✓ The Nigerian Shippers' Council (Freight Stabilization Fees) Regulations 1995.
- ✓ The Nigerian Shippers' Council (Local Shipping Charges) Regulations 1997.
- ✓ The Nigerian Shippers' Council (Inland Container Depot) Regulation 2007.
- ✓ The Nigerian Shippers' Council (Container Freight Station) Regulation 2007.
- ✓ **The Nigerian Shippers' Council (Port Economic) Regulation 2015.**

Whilst the Freight Stabilization Fees Regulations 1995, and the Local Shipping Charges Regulations of 1997 both consolidated Shippers Council role in regulation of freight, shipping charges and surcharges, the 2007 Inland container Depot Regulations and Container Freight Station Regulations both dealt with the Shipping Councils additional roles in increasing and improving related facilities and service standards. But by far the most far reaching of the regulations has been the 2015 Port Economic Regulation, not only because for the first time it named the Shippers Council the Ports Economic Regulator but also because it went further to list out , all that is to be regulated, who is to be regulated and even how the regulation will be undertaken. It is important not to ignore the fact that in addition to consolidating the Shippers Council's own statutory mandate, these regulations are also instruments of delegation of Governments Central authority and powers. These regulations though signed by the Minister are all approved by the Federal Executive Council and constitute in also a delegation of authority from that body to a statutory agency under its authority and control.

The 2015 regulation seeks to improve the regulatory regime at Nigerian ports for the control of tariffs, rates, charges and other related economic charges. It requires the NSC to; enforce fair trade practices to protect rights and balance interest of providers and users of port services as it had always been required to do in by Section 3 of its Establishment Act. Also it reinforces its mediatory roles and requires it to establish modern dispute resolution mechanisms, minimize high costs of doing business, act as Interim Economic Regulator including as required by the Port Concession Agreements, monitor and enforce standards of service to ensure availability , accessibility ,affordability , predictability and adequacy of services thereby setting out clear objectives that need to be achieved by the NSC in exercise of its functions, and by which its efforts should be measured.

The regulation requires the NSC also to encourage competition and guard against abuse of monopoly, Regulate market entry and exit, and to ensure

compliance of all parties with Port Concession Agreements to improve affordability, efficiency and ensure protection of shippers interests.

Section 3 of the 2015 regulations specifies the scope of NSC regulatory functions. Section four lists the Stakeholders to be regulated to include all public and private sector actors providing services to Nigerian Shippers (importers & Exporters) and Section five sets out its regulatory powers. All listed parties are ab-initio stakeholders contemplated by the NSC establishment Act.

Generally speaking the 2015 regulations substantially provides clarity on how the NSC should perform roles already assigned regarding charges, facilities and service standards as originally provided for in Section 3 (d) &(e) of the establishment act. Also it identifies how the NSC shall protect interest of Shippers from eg abuse of monopoly positions, by eg regulating market entry and exit and by reducing high cost of doing business etc. The issue of legality of some actions already taken under this 2015 regulations is subject matter of litigation currently and I will refrain from commenting on that issue , but I will address the issue of rationale and appropriateness of appointment of NSC as Port Economic Regulator.

By far all current **public sector stakeholders** in the Shipping Sector are direct service providers. The Nigerian Customs Service is incharge of goods inspection, clearance, levying and collection of duties on imports and exports etc . NPA owns all Port Assets and operates some, whilst a number of its assets have been concessioned out to private companies to operate on terms contained in the various Concession agreements. The Immigration Service is in-charge of entry and exit into or from our Ports of passengers,NIMASA is responsible for the Coastal transportation and owns related assets used to provide related services , though a number of its assets are also being managed by private companies. The basic concept of regulation is that a dis-interested agency or institution moderates market interaction between service providers and service users (Stakeholders). As a regulator each of these public agencies except the

Shippers Council will be regulating its own services. This is not acceptable, it is infact this situation that regulatory frameworks are established to prevent. Off all public agencies operating at the Ports only the Shippers Council has a broad statutory mandate to intermediate, monitor, advice upon, mediate or interrogate on behalf of Shippers, services provided by the others, or to balance the interest s of service providers and service users. Its original core service is the protection of the interest of service users(importers & Exporters) , in other words the Public. Also prior to this 2015 regulation, the Shippers Council was by provisions of its establishment statute the intermediary between these public agencies (service providers), their concessioners, other private service providers like ship owners/ operators, shipping lines on the one hand and the Nigerian Shippers (Importers and Exporters) the public on the other on diverse issues including service standards and charges.

I can state therefore without fear of any credible contradiction that off all Public Agencies Stakeholders at the Ports the Nigerian shippers Council is the best positioned to be appointed and to act as Regulator of the Port or Transport Sector.

Nigerian Shippers Council Service Areas.

Before its appointment as the Ports Economic Regulator, the NSC operated in seven service areas

I will attempt to discuss these service areas one after the other.

1. Stakeholders/Industry Support Services

This is one of the most important Service areas of the NSC. Under it the NSC has in collaboration with stakeholders developed seven or more key support service initiatives to assist Nigerian Shippers and other stakeholders.

They are;

- ✓ Cargo Defense Fund
- ✓ Inland Container Depots (ICDS)/Container Freight Stations (CFFs).
- ✓ Truck Transit Parks (TTPs)project
- ✓ The Port Community System/ National Single Window Program
- ✓ Border Information Centers (BICs)
- ✓ Sea Link Project.
- ✓ Advance Cargo Declaration (ACD)/ International Cargo Tracking Note (ICTN) Scheme

2. Stakeholder Representation Services

Stakeholder representation services rendered by the NSC includes; Stakeholder negotiations with shipping lines/owners, Port Agencies, Terminal Operators etc on issues affecting shippers and their cargo;Representation in local and international shipping and trade related fora and organizations such as International Maritime Organization (IMO), Maritime Organizations of West and Central Africa (MOWCA), Union of African Shippers' Councils (UASC) and United Nations Conference on Trade and Development (UNCTAD);Port Consultative Committee meetings;An NSC/NCS Technical Cooperation - discussing import/export clearance issues;Negotiations with Transport Sector stakeholders to review haulage rates, streamline multiple taxes, levies, and monitor compliance to existing rates;Consultation and negotiation with stakeholders aimed at reviewing port charges; Consultations to harmonize operations of security agencies; Encouraging the formation of Shippers' Associations nationwide to empower Shippers for negotiations with providers of shipping services.

There are now 25 registered Shippers Associations nationwide

3. Information Services

The Nigerian Shippers Council Information Services has over the years included; Keeping and operating a National Register of

Shippers; Maintaining Information Centers for stakeholders at NSC Head Office, Abuja Liaison Office and all Zonal Coordinating Offices nationwide; Publishing from time to time all tariffs, rates and approved local shipping charges; Developing a Trade Database which provides online information to stakeholders on all aspects of international trade (www.shipperstradedata.gov.ng).etc

4. Stakeholder Advocacy Services.

The Shippers Council advocates industry improvements for Shippers and also all other stakeholders. It seeks consensus on initiatives that improve performance and support growth in the industry.

5. Stakeholder Advisory Services

The Council advises shippers and other stakeholders on contemporary developments in international trade and shipping. The Council advises the Federal Government on policy formulation and implementation as it relates to the development of the shipping industry eg maritime piracy, use of INCOTERMS, the congestion of the port access roads, Automotive Policy, tariff's etcetc.

6. Research Services

The Council conducts research into aspects of transportation and logistics issues on international trade for the benefit of all stakeholders in the industry. An example is its study on Port access road, local shipping charges, comparative freight within the sub-region, etc.

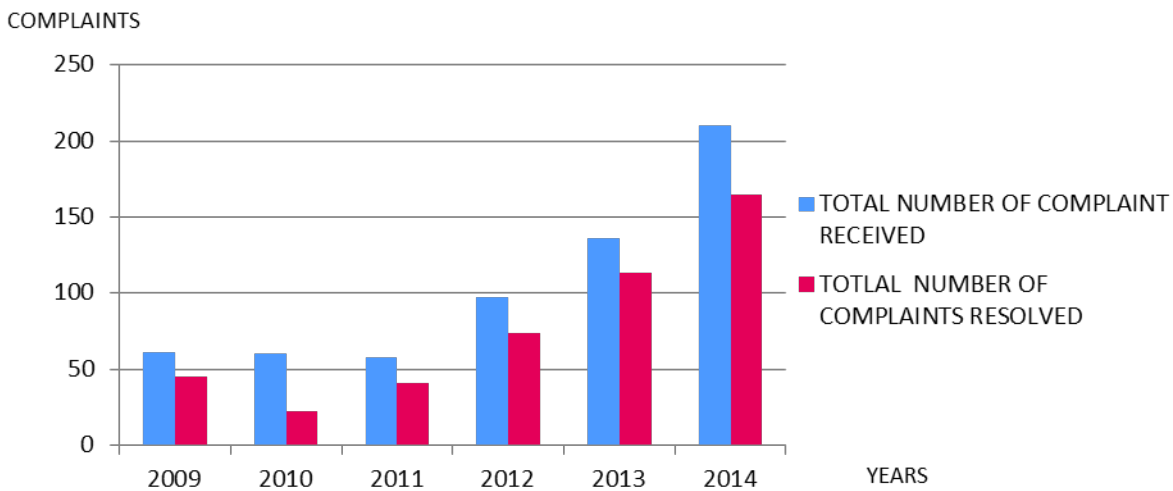
7. Education/Enlightenment Services

The Council regularly organizes enlightenment programs for stakeholders on contemporary developments in international trade. The enlightenment programs cover insurance, financial issues, shipping procedures and documentation, application of nomenclature, port and terminal operations, international trade laws and conventions, etc. This program is a testament to this service.

8(a) Complaint Handling

A Major Service area for the NSC has been stakeholder complaint management and settlement

Its Complaints resolutions have led to compensations, refunds, discounts, prevention of wasteful court cases, waivers and payments to complainants of various amounts. Part 1V Sections 9-12 of the Port Economic regulations 2015 strengthens this role.



8(b) The Port Service Support Portal

This ICT Service support and complaint resolution tool seeks to ; Provide a centralized automated access for stakeholders to seek support for pending service requests from Port agencies and stakeholders. It will improve stakeholder access to agency complaint mechanisms by providing a centralized technology driven channel to the complaint mechanism of different Port agencies in a manner that provides peer review. It is intended to improve collaboration in managing service support requests and complaints that touch on different agency operations. It is creating an automated system for monitoring of service requests/complaints in the sector that will be regularly evaluated.

The system will have a support Unit within Shippers Council to follow up on all service requests and or complaints and track action and or feedback and

report back periodically to a steering committee of stakeholders, which will provide governance for the tool.

This tool when launched will be located at the NSC (Port Regulator) by consensus of Stakeholders because of its statutory mandate to handle trade related complaints brought before it either by service users against service providers or by service providers against their clients. This Joint initiative of the Port Sector Stakeholders was recommended by the Corruption Risk Assessment (CRA) conducted in the Port Sector in 2013 with all Stakeholders participating and led by of the TUGAR/ICPC/BPP.

A Snap-shot of the role of Nigeria's Shippers Council in the Maritime and Transport Sector.

There are four important sources of information on the Roles of the Nigerian Shippers Council in the Maritime Sector. These will include the International history behind the establishment of National Shippers Councils. The Nigerian Shippers Council Establishment Act, the Various Regulations Issued pursuant to the Establishment Act and the various Services and Initiatives offered by the Nigerian Shippers Council. The Key high point of the role of NSC in the Sector will be trade facilitation, which includes;

- ✓ Creating fora/linkages for collective bargaining between stakeholders.
- ✓ Moderation and regulation of tariffs and charges.
- ✓ Moderation and regulation of service standards
- ✓ Complaints management
- ✓ Stakeholder representation and protection of interests of Nigerian shippers(Importers & Exporters)
- ✓ Promoting infrastructure improvements and stakeholder collaboration
- ✓ Research, gathering and dissemination of information/Education.

In Conclusion therefore, I can say that if there is one description that encapsulates the role of the Nigerian Shippers Council as intended originally and as currently captured in public records. It is the description,

appellation and functions of the Port Sector Economic Regulator, even though it may not always have had all the powers required to exercise those functions.