

# SHIPPING REVIEW

GHANA'S AUTHORITATIVE QUARTERLY MARITIME JOURNAL

VOLUME 23 NO. 1, JANUARY - MARCH, 2021

## THE ECOWAS TRADE LIBERALIZATION SCHEME (ETLS) AND THE OPERATIONALIZATION OF THE AFCFTA

### -WHAT WILL CHANGE?



#### ALSO IN THIS ISSUE

- The Regime of Innocent Passage Under the Law of the Sea Convention, 1982
- Network Freight Forwarding Limited
- GSA in Retrospect - 2020
- Empowering Women As Leaders to Secure a Sustainable Maritime Industry
- Streamlining Bureaucratic Bottlenecks along Ghana's Land Borders to take Advantage of the African Continental Free Trade Area (AFCFTA)
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- Bawku Onion Dealers' Association

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Investing in women is the most effective way to lift communities, companies, and even countries. Countries with more gender equality have better economic growth. Companies with more women leaders perform better.

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## THE ECOWAS TRADE LIBERALIZATION SCHEME (ETLS) AND THE OPERATIONALIZATION OF THE AFCFTA – WHAT WILL CHANGE?

By Anab Abudu, Freelance Researcher

From the time of the independence of many African countries in the 1960s, there have been many unsuccessful attempts at industrialization, efficiently using import substitution<sup>1</sup>.

UNCTAD's Economic Development in Africa Report of 2019 reports that with its 1.2 billion people making up about 16.3% of the world's population, Africa's share of the world economy was 2.9% (2016 est.) with total trade from the continent to the rest of the world averaging USD 760 billion in current prices in the period between 2015 and 2017; estimated at about 2.6% of world trade. The share of exports from Africa to the rest of the world ranged from 80% to 90% in 2000-

2017 compared to intra-African exports of 16.6%. Asia and Europe still remaining the largest trade partners of the continent.

### Regional Economic Communities (RECs)

It is statistics like these, the low performance in trade facilitation and other factors that have informed the view that regional integration and regional economic areas (REAs) are a good accelerator and facilitator for structural transformation. RECs are set up with the aim to create single markets for goods and services, free movement of persons and capital, thus paving the way for accelerating the establishment of a customs union, a common market and so on.

In the 1960s, *United Nations Economic Commission for Africa* (UNECA) recommended the formation of sub-regional groupings to help address the challenges of poverty eradication<sup>2</sup>, good governance, as well as some of the issues highlighted above. Since then, eight (8) regional economic blocs have been recognized by the African Union namely; the Arab Magreb Union (AMU), the Common Market for Eastern and Southern Africa (COMESA), the Community of Sahel-Saharan States (CEN-SAD), the East African Community (EAC), the Economic Community of Central African States (ECCAS), the Economic Community of West African States (ECOWAS), the Intergovernmental Authority on Development (IGAD) and the

<sup>1</sup>. UNECA, 2019, History of Africa's regional Integration efforts, available at [www.uneca.org/oria/pages/histor-africa%u2019s-regional-integration-efforts](http://www.uneca.org/oria/pages/histor-africa%u2019s-regional-integration-efforts).

<sup>2</sup>. *ibid*



Southern African Development Community (SADC).

Much has not been achieved in facilitating trade relationships among members compared to others outside the continent even though the regional economic blocs have made some strides. The challenges of the economic blocs especially in terms of facilitating and boosting trade, it is expected the AfCFTA will help to address.

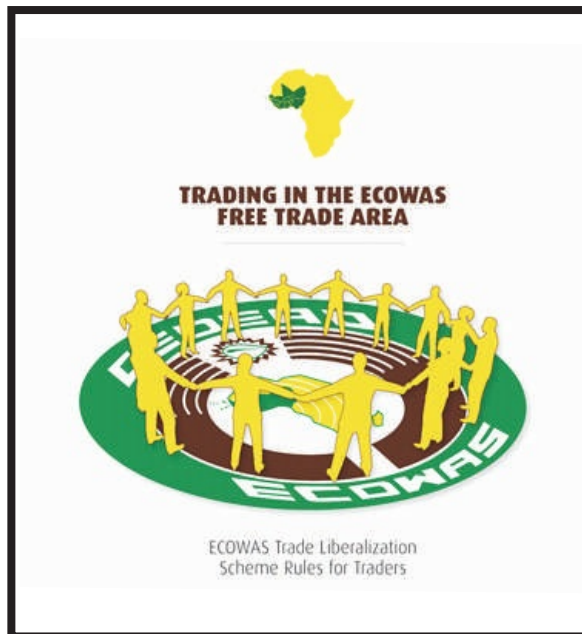
### ECOWAS

ECOWAS is the 15-member regional economic community for West African states and one of the RECs recognized by the African Union (AU). The body is meant to foster interstate economic and political cooperation<sup>3</sup>. With a very mobile population, (even though intra-regional), about 3% of the regional population translating into some 7.5 million live in countries other than their own. The treaty establishing the community was first signed by the heads of states and governments of 16 member states on 28th May, 1975 in Lagos, Nigeria<sup>4</sup>. Mauritania in December 2000 withdrew its membership.

According to article 3 of the ECOWAS treaty, the *“aims of the community are to promote co-operation and integration, leading to the establishment of an economic union in West Africa in order to raise the living standards of its people and to maintain and enhance economic stability, foster relations among member states and contribute to the progress and development of the African continent”*<sup>5</sup>.

A significant measure in ECOWAS'

trade policy was the creation of the ETLS - the objective of which was to ultimately create a customs union within a 15-year time frame beginning from when the scheme entered into force on 1st January, 1990 as stipulated in article 54 of the treaty.



### ETLS (ECOWAS Trade Liberalization Scheme)

Trade has a relationship with development, therefore trade policies have various objects including raising trade volumes, harnessing the benefits of economic activities to impact the economic status of the population; contributing to lifting them out of poverty, etc.

ETLS; a vehicle for boosting intra-regional trade and economic activity was created under the provisions of article 3 of the ECOWAS Treaty with the express mandate to ensure the *i. liberation of trade by the abolition among member states of customs duties levied on imports and exports and the abolition among member states of non-tariff barriers in order to*

*establish a free trade at the community level*

*ii. the adoption of a common external tariff and a common trade policy, and*

*iii. the removal, between Member States, of obstacles to the free movement of persons, goods, services and capital and to the right of residence and establishment.*

It was established in 1979 for agricultural products, handicrafts (and handcraft-related products) and crude oil. It was, however, extended to include industrial products in 1990. ETLS is the main instrument establishing ECOWAS as a free trade area; an intermediate step towards the goal of establishing a common market in the region. In 2003, the commission set out the origin criteria and defined the concept of original products that qualified for the free movement of industrial products across the region<sup>6</sup>.

According to ECOWAS, intra-regional trade averaged 18% per year between 2005 and 2014, with the commodities traded being according to sectors - mining (oil, iron, bauxite, manganese, gold, etc.), agriculture (coffee, cocoa, cotton, rubber, fruits and vegetables (and other products rather marketed in the region), dry cereals, roots and tubers and livestock products), etc. Nigeria, Ghana and Senegal constituted about 87% of this trade and were also responsible for 79% of regional imports (totaling about USD 55.520 million per year) and 94% of exports and re-exports (also totaling USD 77.792 million per year)<sup>7</sup>.

<sup>3</sup> ECOWAS, 2016, History of ECOWAS, available at <https://www.ecowas.int/about-ecowas/history/>

<sup>4</sup> ECOWAS, 2016, Treaties, available at <https://www.ecowas.int/ecowas-law/treaties/>

<sup>5</sup> Ibid

<sup>6</sup> ECOWAS, 2016, Trade, available at [www.ecowas.int/ecowas-sectors/trade](http://www.ecowas.int/ecowas-sectors/trade).

<sup>7</sup> Ibid

| ETLS  |  | AfCFTA  |   |
|---|--|---|---|
| Products Covered  | Benefits   | Products Covered  | Benefits  |
| Unprocessed goods - including livestock, fish, livestock, plant, mineral products that have not undergone industrial transformation, etc.   | (i) Total exemption from import & export duties and taxes  | The framework proposes for participating countries to remove tariffs on 90% of goods  | (i) Zero duty for 90% of products   |
| Traditional handicraft products - made by hand with or without the help of tools, instruments or devices that are directly activated by craftsmen e.g. wooden cooking utensils, mats, carpets, bed linens, footwear, etc. | (ii) No quantitative /quota restrictions or prohibitions and administrative obstacles                            | In the short term, countries can protect or impose tariffs on 10% of goods deemed 'sensitive' but such protections will be removed in future. | (ii) No quantitative restrictions and regulatory bottlenecks  |
| Industrial products originating from the region   | (iii) Non-payment of compensation for loss of revenue for items in (i) and (ii) as a result of their importation |   | (iii) Free movement of goods and persons between member states and the right of residence and establishment |
|   | (iv) Free movement of goods and persons between member states and the right of residence and establishment       |   |   |

In January 2015, the ECOWAS Common External Tariff (CET) which is an important element towards achieving the customs union agenda took off. With its implementation started, traders from member states are expected to pay uniform tariffs across member states. However, enterprises from the export processing zones or free zones and other special economic schemes may not qualify to benefit from ETLS<sup>8</sup>.

### The African Continental Free Trade Area (AfCFTA)

Averagely, businesses face a 6.1% tariff when exporting within Africa than when they export outside it and AfCFTA will progressively

eliminate this<sup>9</sup>, making it easier for African enterprises to trade more within the continent than outside of it. This will therefore allow them to cater to the needs of and benefit from the rapidly growing African market estimated to be 2.5 billion people in 2050 and currently around 1.2 billion people with a GDP of USD 2.5 trillion<sup>10</sup>.

AfCFTA is the framework agreement between AU member states, covering trade in goods and services (including protocols on Trade in goods, Trade in services, intellectual property rights, competition policy, investment and dispute settlement). With the objective to create a single continental market for goods and

services, the agreement aims to progressively remove customs duties and non-tariff barriers on goods and allow the free provision of services in priority sectors<sup>11</sup>.

As a result of the Abuja treaty signed in 1991, citizens of member states (persons) and capital can move about freely within the continent. The treaty also allows citizens to enjoy the right of residence and establishment, to be complemented by the establishment of a single African air transport market (to give true meaning to the facilitation of the free movement of persons).

The continental agreement is expected to accelerate continent-wide integration but more importantly facilitate better trade relationships among countries to help realize the aspirations of a prosperous and united Africa as originally envisioned. Formally entering into force on 30th May, 2019, trading under aspects of its terms commenced from 1st January, 2021 instead of the original scheduled date of 1st July, 2020 (as a result of the effects of COVID-19). AU members who have not yet signed on to the agreement will have neither rights nor obligations under the AfCFTA when operationalization kicks in. Towards realizing the aspirations of agenda 2063, the role of AfCFTA is to liberalize trade among all African countries.

The AfCFTA acknowledges existing regional economic areas as building blocs towards its establishment and success.

All eight RECs recognized by the AU haven't achieved the same level of integration and this;- the different levels of integration across the

<sup>8</sup> Nigeria customs service, 2020. available at [https://customs.gov.ng/?page\\_id=3060](https://customs.gov.ng/?page_id=3060)

<sup>9</sup> UNECA, 2019, African Continental Free Trade Area – Questions and answers, available at [www.uneca.org/oria/pages/African-Continental-Free-Trade-Area-Questions-and-answers](http://www.uneca.org/oria/pages/African-Continental-Free-Trade-Area-Questions-and-answers).

<sup>10</sup> Ibid

<sup>11</sup> European Union, 2019,. Available at <https://africa-eu-partnership.org/en/afcfta>





continent creates a fragmented structure which could be a challenge for a continent-wide integration<sup>12</sup>. The operationalization of the CFTA is expected to deliver harmonization and better coordination of trade regimes as well as the elimination of challenges associated with the multiple and overlapping trade agreements across the continent.

Based on the Abuja treaty, there already exists an African Economic Community. Now the harmonization of tariffs and the creation of the continental free trade area will also pave the way for the creation of a continent-wide customs union, to be followed by the establishment of an African common market with a single currency with the ultimate goal of merging all eight (8) RECs into one economic and monetary union<sup>13</sup>.

#### **Role of RECs under the AfCFTA**

Under article 12 of the treaty, RECs will be important implementation partners and be represented at

AfCFTA's committee of Senior Trade Officials in an advisory capacity and will be charged with coordinating and monitoring measures for implementation and resolving non-tariff barriers and harmonizing standards.

#### **Expected impacts of AfCFTA on ETLS beneficiaries**

Between the provisions of article 78, the most-favoured-nation (MFN) provisions (under art. 43) of the ECOWAS

treaty and the objectives of the AfCFTA there is consistency and therefore no clash of laws or conflicts are expected. The community is expected to constitute an essential component of the integration of the African continent and member states are expected to undertake to facilitate the coordination and harmonization of policies and programs of the community with those of the African Economic Community.

Article 19 of the AfCFTA provides that in the event of any conflict and consistency between the agreement and any regional agreement, the AfCFTA should prevail to the extent of that specific inconsistency, except where the agreement provides otherwise for it. Importantly, the agreement stipulates that where state parties and regional economic communities that have attained higher levels of regional integration, such higher levels

should be maintained among themselves.

For ETLS beneficiary firms across West Africa, the main impact of the AfCFTA will be that it will change the relationship between ECOWAS members countries and non-members specifically non-members from the continent from being described as third countries for customs purposes. The operationalization of the CFTA will give other companies/countries greater access to the ECOWAS market to compete on almost the same terms as the ETLS beneficiaries. Imports from other countries in Africa who were third countries because of the scheme will now no longer be considered third countries. Therefore, eroding some of the competitive advantages they enjoy including among other things; the advantage of importing duty-free and quota-free from the region aimed at making their goods cheaper and more competitive on price.

For example, whereas goods imported from South Africa or Morocco into the ECOWAS area would have attracted all applicable import duties and taxes before the operationalization of the AfCFTA compared to importing the same products from the ECOWAS region, they will now come in with the advantage of some import duty and tax exemptions making them a little more competitive than they would previously be. This could mean that competitors would have the similar competitive advantages and may pass on some of those advantages to customers through price reductions which will make their products more competitive and attractive to buyers.

<sup>12</sup> UNECA, 2019, History of Africa's regional Integration efforts, available at [www.uneca.org/oria/pages/histor-africa%u2019s-regional-integration-efforts](http://www.uneca.org/oria/pages/histor-africa%u2019s-regional-integration-efforts).

<sup>13</sup> Brookings, 2014, available at <https://www.brookings.edu/blog/africa-in-focus/2014/01/09/will-there-be-an-african-economic-community/>



An important point to also keep in mind however is that trade agreements do not automatically guarantee trade by themselves.

At the same time, AfCFTA offers the same benefits to ETLS beneficiaries/ECOWAS-based companies and citizens entering other economic communities/countries on the continent. It provides a wider markets and trade opportunities. Micro, Small and Medium Enterprise (MSMEs) operating in the community and especially under the ETLS can use their experience as stepping stones for expanding into the continent and further out.

When in August 2019, Nigeria closed its land borders to neighbors, the goods stuck at the borders could have been recalled earlier on and sold in the markets in the CFTA were AfCFTA is to be operational.

Apart from the removal of tariffs for third countries, the AfCFTA will also focus on clearing non-tariff barriers that serve as obstacles to trade across the continent (for both ETLS member and non-member states). Existing Non-Tariff Barriers (NTBs) whose negative effects include slowing down the movement of

goods and increasing trade costs if not addressed will reduce the momentum and potential impacts of the CFTA. NTBs could be anything from excessive delays, demand for excessive import/trade-related documents, unjustified packaging requirements, ad hoc fees at borders, restrictive product standards, prohibitions, etc.

The AU has therefore launched a campaign dubbed the “Trade Easier Campaign” as a reporting mechanism for NTBs. The tool is expected to help the NTB Coordination Units at the AfCFTA secretariat/RECs/NTB National Focal Points (NFPs) work towards their removal. The campaign has been designed by the AU in

partnership with UNCTAD as a reporting tool available at [www.tradebarriers.africa](http://www.tradebarriers.africa).

## Conclusions

The operationalization of the continental agreement should not result in any confusion or uncertainties about the status of ETLS beneficiary firms.

Lessons from the implementation of the ETLS have shown that the private sector has not fully taken ownership of the scheme and many private sector players (especially SMEs) are not aware of its full benefits. Without their ownership and involvement in all aspects of the AfCFTA's operationalization, the jamboree and public excitement about AfCFTA would not amount to much. To this end, the processes involved in registering and benefiting from the agreement should be made easier for qualified businesses to scale and less costly so that they do not serve as obstacles instead of being facilitators.

A key issue that lingers among others is the extent to which state parties are ready and prepared to remove tariffs on 90% of goods imported into their territories because of how important customs duties are a source of domestic revenue mobilization (esp. for most countries).



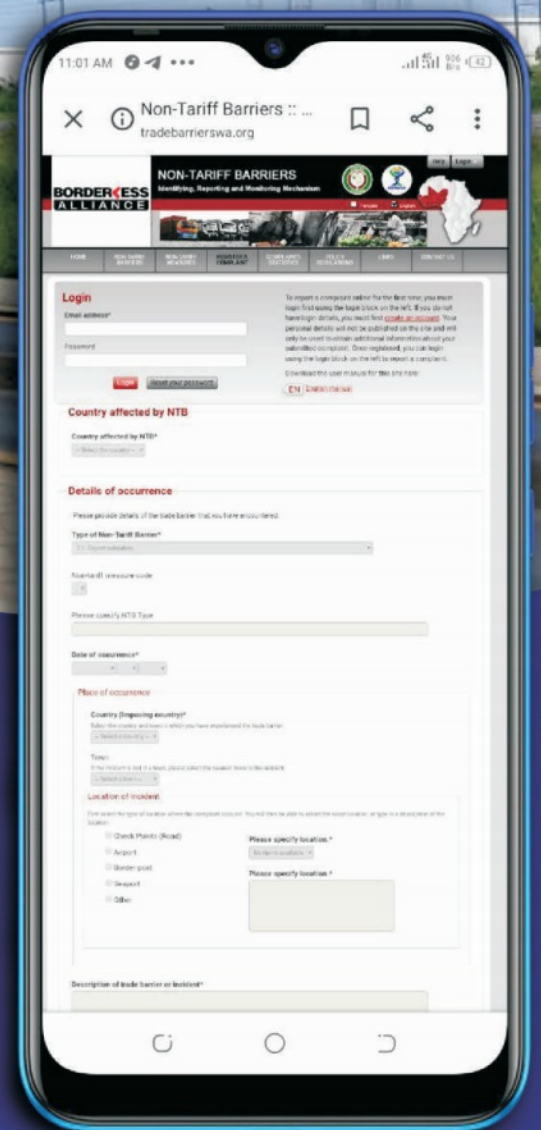




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## The Regime of Innocent Passage Under the Law of the Sea Convention, 1982

*By Abdul Haki Bashiru-Dine, Ghana Shippers' Authority*

### I. INTRODUCTION

The seas have always proved as an extraordinary resource for the limited number of communities having access to them. Although in modern times the seas have been considered a resource available for the use of all nations and the exclusive property of none, the recent history of the law of the sea continues to reflect conflict between states seeking unhampered navigation and utilization of resources and other states seeking exclusive control over adjacent seas.

The international law of the sea seeks to moderate these competing interests by "establishing and maintaining a public order in the shared use of, and shared competence over, the oceans. A major event in the

history of the international law of the sea occurred on April 30, 1982, with the adoption of the United Nations Convention on the Law of the Sea during the eleventh and final session of the Third Conference at United Nations headquarters in New York.

The Convention, which represents the culmination of nine years of intensive effort, is particularly significant for its comprehensiveness." Virtually every human uses the oceans—navigation and overflight, resource exploration and exploitation, conservation and pollution, fishing and shipping—is addressed in the Convention's 320 articles and nine annexes. Whether the new Convention becomes a formally ratified treaty, its very existence "modifies political, economic and

legal relationships in countless ways whose direction and intensity we can predict only in a most speculative way." This Comment examines the United Nations Convention on the Law of the Sea (LOS Convention) as it affects two basic issues: (1) the right of passage in the territorial sea or "innocent passage," and (2) the right of passage through straits used for international navigation, or "transit passage." The primary conflict relevant to analysis of ocean passage involves the security interests of coastal states and the navigational interests of maritime states. The most exclusive claims advanced by coastal states are those that seek to protect or limit access to "internal" or "territorial" waters immediately adjacent to the state, and those that seek to extend the



reach of state sovereignty over these waters. These nations justify their demands in terms of economic necessity in order to preserve petroleum and mineral resources, to protect fishing interests, and to prevent pollution in their adjacent waters.

The most inclusive' claims, by contrast, are those often advanced by maritime nations, whose interests are best served by maximum freedom of access to the oceans for transportation, communication, military purposes, and the production and exchange of raw materials and goods. Maritime nations view these policies as advantageous to their own interests as well as to those of the larger world community. The



LOS Convention represents the latest attempt to strike a balance between the interests of coastal states and maritime states through the regimes of innocent passage and transit passage.

### **INNOCENT PASSAGE**

Innocent passage is a concept in the law of the sea that allows for a vessel to pass through the territorial waters of another state, subject to certain restrictions. The United Nations Convention on the Law of the Sea, UNCLOS, Article 19 defines innocent passage as:

1. Passage is innocent so long as it is not prejudicial to the peace, good order or security of the coastal State. Such passage shall take place in conformity with this Convention and with other rules of international law.
2. Passage of a foreign ship shall be considered to be prejudicial to the peace, good order or security of the coastal State if in the territorial sea it engages in any of the following activities:
  - a. any threat or use of force against the sovereignty, territorial integrity or political independence of the coastal State, or in any
  - e. the launching, landing or taking on board of any aircraft;
  - f. the launching, landing or taking on board of any military device;
  - g. the loading or unloading of any commodity, currency or person contrary to the customs, fiscal, immigration or sanitary laws and regulations of the coastal State;
  - h. any act of wilful and serious pollution contrary to this Convention;
  - i. any fishing activities;
  - j. the carrying out of research or survey activities;
  - k. any act aimed at interfering with any systems of communication or any other facilities or installations of the coastal State;
  - l. any other activity not having a direct bearing on passage.

Innocent passage concedes the coastal country's territorial sea claim, unlike freedom of navigation, which directly contests it. The law was codified in 1958 and affirmed in 1982.

### **Innocent Passage And Internal Waters**

Internal waters are marginally dealt with by UNCLOS. The dividing line between the internal waters and the territorial sea of a State is established under Article 8. Internal waters are described as waters on the landward side of the baseline of the territorial sea.<sup>1</sup>

Although UNCLOS deals incidentally with the question of internal waters they have a very important status. Even though they fall within the territorial sovereignty of a State they are the main source/entry point of international

- other manner in violation of the principles of international law embodied in the Charter of the United Nations;
- b. any exercise or practice with weapons of any kind;
- c. any act aimed at gathering information to the prejudice of the defence or security of the coastal State;
- d. any act of propaganda aimed at affecting the defence or security of the coastal State;

<sup>1</sup>This is based on the Anglo Norwegian Fisheries case decision.



navigation and commerce and therefore a very important dimension to the question of ports.

Article 2 indirectly described the quality of State control enjoyed in internal waters by indicating that territorial sovereignty extends to territorial waters. Territorial waters have been assimilated with the land.

In UNCLOS, innocent passage enjoyed by the State over the territorial sea has an important limitation, that being the right of all states to exercise innocent passage.

There is no right of innocent passage in the internal waters of the state i.e. ports, harbors etc. They are considered under international law to be an intricate part of the territory of the coastal State. There are certain refinements in State practice with respect to the exercise of territorial sovereignty.

### **Principles Of Maritime Jurisprudence And Innocent Passage**

The fundamental principle was judicially approved in the *Nicaragua v USA* 1986 where the International Court of Justices (ICJ) held that the right of access to a port is subject to the discretion of the State. A state is entitled to decide whether or not a ship is allowed to enter its ports or

harbour. It is also true to say that very much more so is the right of the coastal state to prohibit the exit of a ship from its ports or harbor. However, there are certain refinements in international law that modify these exclusive rights to determine who comes to your port and who does not. It is possible for a coastal state to nominate certain established ports as international ports open to international commerce and trade. In such cases this may be done unilaterally or it may be done through the establishment of entry right via a treaty such as the 1923 statute on maritime ports.

Most States such as Malta have ports, which are designated as open for international commerce. We have the Freeport in Malta for containers to reach other destinations. Although a vessel still requires permission to enter when a state designates its port as open for international commerce there is a presumption that your ship will be allowed to enter the port. In 1987 when the government changed there was a change in approach towards foreign policy. In certain respects, the new government was more pro-western. One of the strong pillars of Malta's foreign policy prior to 1987 was that no warship should enter their harbors. The new Prime minister invited a British aircraft carrier to enter the grand harbor. This permit was strongly objected to by the labor

union of Malta closely linked with the opposition party. It controlled the workers in the Malta dry-docks. The laborers hijacked an oil tanker as the aircraft carrier was approaching and blocked its entry in the grand harbor. In the end the solution was having the carrier reach Malta from another port.

The more recent trend is for states to negotiate the treaties of friendship, commerce and navigation. There are many of these treaties, which guarantee the reciprocal entry of vessels in ports of state parties. Sometimes conditions are attached on the permission to enter.

The Savannah: it is an interesting case which has reflection of a problem which existed 5-10 years-ago when the USA and UK navy refused to divulge whether their vessels were carrying nuclear war heads. Malta had to pass a resolution, which denounced the entry of such warships. In New Zealand (NZ) the regional strategic treaty came to a great challenge when it refused to allow US warships to enter their harbors unless they declared whether they were carrying nuclear weapons and USA refused.

It is also evident in state practice that the states may close their ports even though they are normally open to international traffic where they find it necessary to do so in respect of peace, public order and peace. This is especially used in respect of warships. This closing of ports for security reasons is a well recognised right which is used particularly when there is tension in the area and the coastal state wants to avoid a warship within its territory.

The final observation relates to the well-recognized right to allow a vessel entry into your waters in cases of force majeure or humanitarian considerations. All these grant the right of a vessel in





distress to enter your internal waters. Once a vessel enters the internal waters of the state it becomes subject to the sovereignty of the state. The fundamental principle is that the vessel upon entry is subject to the legislative jurisdiction of the state unless the warship enjoys sovereign immunity or the vessel is a government-owned vessel but which is not used for commercial purposes such as a hospital ship or a presidential yacht.

After the collapse of the Soviet Union there were interesting shipping law cases where merchant ships continued to trade but when sued they claimed they could not because they were government-owned. The convention makes it very clear that immunity enjoyed is for government-owned vessels not used for commercial principles. In the development of customary international law, the doctrine of state immunity is restricted by the doctrine *jure imperii*, *juri justicionis* (a vessel acting in its public capacity, a vessel acting in its commercial capacity).

Once a ship enters the harbor it is subject to the sovereignty of the state. However, in practice there are a number of interesting refinements, which deserve attention. Although there is this right of sovereignty it is true to say that most states will allow a vessel to exercise the right to regulate the

internal economy of the vessel. Although the coastal state has a right to enforce its laws against the vessel and against the person, cargo aboard it subject to the rules of immunity as a general practice. A lot is allowed in the hands of the flag state and therefore a general practice is that the rules of the flag state will be applied even in the harbour when it comes to crew discipline, crew salaries, a system that is enforced either to the captain or to the consul of that state.

Once a ship enters the harbor it is allowed to regulate its internal economy. However, this autonomy continues only to the extent that the interests of the coastal state are not engaged so that if a ship engages in an activity that effects the general order of the coastal state then it could very well lead to the coastal state exercising its jurisdiction and authority. There are two categories of approaches to this issue.

There is the so-called constructive interpretation of national interest and then there is the literal interpretation of national interest. In the literal interpretation a state will only intervene when there is a violation of its laws. For example, where the violation is contrary to the environmental rules of the ports by the discharge of noxious substances to the port. But some states led by the French approach intervened even when there is a

constructive interpretation of the violation. If there is a homicide on a vessel some states will nonetheless exercise jurisdiction even though there is no direct violation of the coastal state laws.

An example of an uncertainty refers to cruise lines being in a jurisdictional limbo. One of the challenges is how to capture such a vessel because once you arrest a cruise liner for a member of the crew if he sues then you have a lawsuit which may take weeks and the passengers will have to be put in hotels and flown back home. It will be very costly.

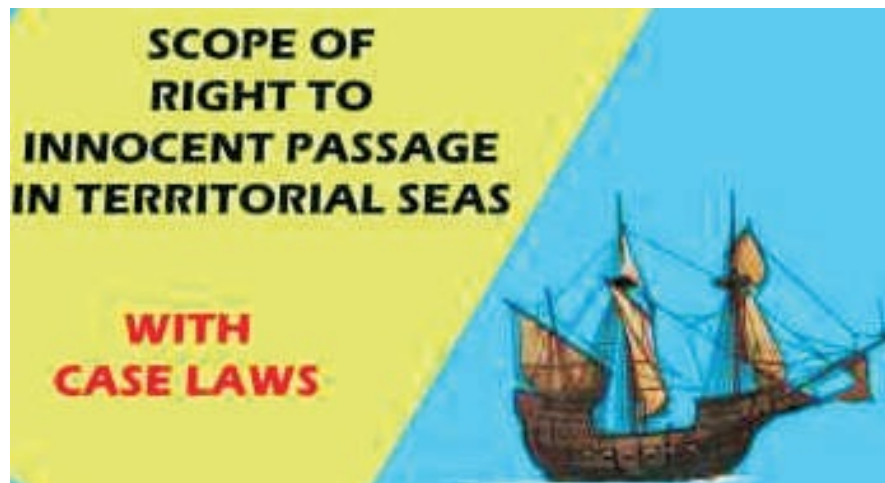
It is also possible for the captain of the vessel or the consul of the flag state to seek the assistance of the coastal state.

The Luiza case: The vessel is registered in saint Vincent and owned by Texas Oil. They were quite impressed that gold bars had been discovered in Biscet. It applied to search for oil in the Bay of Bisect. The vessel was raided and the police found everything to do with treasure hunting. The Luiza was captured and taken to port. The captain decided to come back to Spain and he went to Portugal hoping to drive across the open border but there was an European warrant for his arrest, he was arrested in Portugal. International warrants of arrest have become very effective.

### **The Doctrine Of Innocent Passage**

The doctrine of innocent passage as established under section 3 of part 2 reflects customary international law. The doctrine of innocent passage is made up of two components. That of passage and that of innocence.

The first thing to note is that the title of subsection (a) is rules applicable to all ships. That is innocence passage is granted to all ships. In article 20 it is implied that submarines are covered by this title. Ships of all states enjoy the



right of innocent passage through the territorial sea. Ships registered in Switzerland a land locked state also have the right of innocent passage. It seems that the right can be vital to landlocked states particularly because they have the right to transit ports.

The first component right of passage is defined in Article 18. As you would imagine passage is a limitation on sovereignty. The definition of innocent passage shows the restriction that is being imposed and that it is limited to the terms of Articles 18 and 19 in particular. As is often the case there are also other restrictions found in the doctrine of the territorial sea particularly in Article 45 section 2.

The component of passage, only refers to navigation which is either traversing the territorial sea. The right of innocent passage is a reference to a vessel going in or out of internal waters, so it is incidental or corollary to access to ports load steps of international waters. Essentially passage entails the access to ports and therefore by its very nature it is required that you traverse the territorial sea.

The drafting of Article 18 section 2 makes it clear that it is a restriction on territorial sovereignty of a limited nature. The Convention requires the vessel to pass in a continuous manner and expeditiously. No stopping in the

shortest time possible. However, for reasons of force majeure the convention allows stopping and anchoring only if it is incidental to the ordinary navigation of the state. This concept of passage, that is a constitutive element of passage is relatively straightforward.

More complex is the doctrine of innocence. The conference was divided between those who wished to see the doctrine of innocence interpreted by the coastal state and those states who were concerned with the discretion given to the coastal state for they feared this interpretation of innocence would allow unnecessary interference with the right of navigation.

Article 19 represents a compromise between the two schools of thought. Article 19 (1) provides a general definition of innocence. In Article 19 (2) there is a list of activities designed to limit the discretion of the coastal state in interpreting the passage of the ship or otherwise. Innocence is that the passage must not prejudice the peace, good order and security of the coastal state. It takes place in accordance with the Convention and other rules of international law. On refers to the UN Charter, one refers to the jurisprudence of the ICJ particularly as established under the Corfu Channel where the court decided the manner of passage could be instrumental in establishing the innocence of passage or otherwise.

In that case reference was made to the diamond formation of the British warships which is a battle formation. It was alleged that the cannons were facing the coasts of Albania and the crew were in a state of alert. Article 19 (2) is designed to limit the interpretation of article 19 (1) for it establishes a list of activities which render passage non innocent if engaged by a passing vessel. On the other side of the solution if an activity is not listed in article 19 (2) then it is permitted and cannot be characterized as non-innocent. When we look at these activities they start with the general principles that a ship which threatens the state ipso facto it is no Innocent. We may have things such as spying also and fishing which would render the passage non innocent.

Particularly interesting is the provision of Article 19 (2L) because you lose your innocence if the ship is involved in any other activity not having a direct bearing on passage. It really restricts the possibilities of carrying out any activity that is not related to the continuous and expeditious passage of the ship. Article 19 is a compromise between those that wanted states to have wide discretion in interpreting passage and those that wanted to have a limited power. The interpretation of Article 19 (1) is limited by the list of activities in Article 192.

Article 20 makes it clear that submarines or other underwater vehicles are required to navigate on the surface and fly their flag. This has serious ramifications. First it recognizes the right of a submarine to innocent passage but it limits this right as the state has to have sight of the submarine and of its nationality. This is particularly a problem in Baltic with the Swedish





identifying submarines passing through their territorial sea without surfacing or showing their flag. The problem of this is that passage of a warship is per se non innocent and that this entails the loss of innocent passage. This is largely the view taken by developing countries and it has led to considerable tensions. Warships and ships of noxious substances have been subject to allegations of denial of innocent passage.

This seems wrong as in UNCLOS there is no prohibition concerning such vessels as warships. The convention title of the section is all ships. It could not have escaped the drafters. There is reference to the passage of warships and how to deal with violations to innocent passage by warships in the convention. That is treated differently by other vessels but it does not mean we can deny their innocent passage.

USSR developed an incident when US challenged the Soviet requirement of authorization of foreign warships. This led to conflicts. This led to a declaration on innocent passage where the two super powers declared that the provisions of the convention reflect customary international law that the list found in Article 92 is exhaustive and that warships are entailed to the right of innocent passage. According to Professor David Joseph Attard, Director, IMO International Maritime Law Institute Malta this is the correct

interpretation. It is reasonable to assert that state practice is reflecting the view that warships enjoy the right of innocent passage.

### **Violation Of Innocent Passage**

Article 21: the coastal state may regulate the right of innocent passage in accordance with the provisions of article 211. However, in order to fully appreciate Article 21 we should draw our attention to article 211 (1b) which puts to article 260 dealing with safety zones and Article 211 (1f) on environmental protection you cannot interpret that unless you refer on Article 211 paragraph 4.

Prohibition is that the laws a coastal state can promulgate cannot apply to the design construction and manning of foreign ships. We have different regulations through different territorial seas unless they refer to generally recognized accepted standards of IMO. Publicity has to be given and foreign vessels must respect these regulations but interestingly if we look at Article 21 section 4 we see the obligations of ships in respect of wreck on the collisions at sea. It is very interesting that even if you have not become a party to the International Regulations for Preventing Collisions at Sea 1972 (COLREGs) Convention but a party to United Nations Convention on the Law of the Sea (UNCLOS) you will become a party to collisions regulations by article 21 1 4. In fact, here we are

adding a bulk of regulations as an integral part of the 1982 passage. The general rule is that the coastal state may take the necessary steps to prevent passage that is not innocent. Of course if the innocent passage relates to a vessel entering its internal waters or port facilities then the coastal state has the right to prevent any breach of the conditions for admission. It is a temporary suspension of innocent passage. Article 25 (3) allows prevention of innocent passage if it is vital for the protection of the state or for a weapon exercise.... It only takes place when it has been sufficiently published. There needs to be an official notification on the suspension of innocent passage. This is especially done in respect of weapons training.

Whilst right of protection under Article 25 are important they are limited compared to Article 30.... In cases of warship before you can ask the warship to leave the territorial sea the convention requires you to ask the warship to comply by official request with your territorial sea. Only if the warship fails to comply you can ask it to leave. There is an obligation under Article 24 section 2 to ensure that dangers to navigation are given publicity. The coastal state can exercise criminal and civil jurisdiction only as specified in article 27 & 28. No charges under 26 paragraph 1 can be imposed and under 24 1 a which he should have said before the right of a coastal state to promulgate legislation must not have the effect of hampering innocent passage.

Therefore, the right is protected. There are a number of restrictions on innocent passage under 18 and 19. The coastal state can only adopt rules and regulations that are listed in Article 21. Secondly the coastal state may have established under Article 22 sea lanes and traffic separation schemes requiring ships to adopt these lanes when passing through the territorial sea. If we are dealing with nuclear power ships and ships carrying dangerous



## The 1982 United Nations Convention on the Law of the Sea

Justin Adriel Espaldon Ordoyo  
U.P. College of Law



materials under Article 23 they have to carry the necessary documentation and establish the necessary precautions required. If we look at Articles 22 and 23 we see that the right to establish sea lanes and traffic separation schemes is not unlimited and there is limitation which this coastal state must take into account.

Article 22 section 3a refers to the recommendations of a competent international organization that being of course the IMO. It is possible under Articles 27 and 28 dealing with criminal and civil jurisdiction for the coastal state to arrest and investigate a vessel under limited conditions when passing through the territorial sea.

Article 73 deals with the enforcement of fishing rights and makes note on Article 292 which deals with the matter. It is possible for the coastal state to impose monetary penalties for the violation of national law dealing with pollution in the territorial sea under Article 230 section (2) and also 220 which deals with rights of enforcement of the coastal state with regards who is dealing with the protection of the environment of the territorial sea in particular Article 220 section (1).

What are the limitations on the sovereignty of the coastal state? First is the legislative powers of the state limited under Article 21. The coastal state may not legislate under Article 21 (2) for the construction manning and operation of vessels. It is required under Article 21 (3) make laws which under Article 24 are not discriminatory and do not

hamper the right of innocent passage.

Articles 28 and 29. This refers to the regime regulating the right of jurisdiction enjoyed by the coastal state when a vessel is passing through its territorial sea. There is a substantial difference in the treatment of criminal and civil jurisdiction. In the case of criminal jurisdiction there is substantial effort to limit the exercise of criminal jurisdiction in four cases and which really demonstrates the protective principle of jurisdiction. First exception is if the consequences of the crime extend to the coastal state. Example would be those found under Article 73 and Article 220 section (3) where ships engages in a criminal activity not confined to the ship but extends to the coastal state.

There is the exception of peace and good order found in Article 27 (1) section (b.) whilst Article 27 (1 a) refers to the coastal state Article 27 (1 b) refers to the country and good order of the territorial sea. This is probably an emphasis required by developing countries in order to ensure that the protection of the coastal state is extended to the good order of the territorial sea. It is useful to note that the rights given to take steps to authorize the criminal jurisdiction with respect to Article 21.

It may be possible to exercise jurisdiction if the master or the consul requires assistance but in fact there is a further reason not found in the 1958 provisions it is possible for a diplomat also to ask

for the assistance of the local authority. This is authorized by the flag state. Final exception is an early manifestation of the desire to combat drug trafficking and therefore the version of the 1982 convention is somewhat update diversion of a similar provision found in the 1958 convention on the territorial sea. When it comes to civil jurisdiction, there is a prohibition against stopping or diverting a ship for the purposes of exercising civil jurisdiction however if there are obligations and liabilities incurred by the vessel for example by bunkering it is possible to exercise civil jurisdiction.

He concludes by referring to the provision on the delimitation on the territorial sea. Under Article 3 of the Convention we have for the first time an outer limit of the territorial sea which is 12 nm. UNCLOS I failed to impose such a limit but now this is found in Article 3. This is a permissive rule of international law. You can have a territorial sea of 4, 6, 10 nm but not 12nm. Article 15 contains provision on the delimitation of the territorial sea which is similar to the Geneva Convention Article 12 on the delimitation of the territorial sea.

It requires adjacent or opposite state to agree on a boundary however failure of agreement imposes upon the parties the median or equidistance line which could be modified if there are special circumstance or historic title which may have to be taken into account. This is the first and last time unlike the 1958 regime where we find a reference to the median line which was a method of delimitation tested on the continental shelf and the Exclusive Economic Zone (EEZ).

It is a political compromise between two groups in the conference. Today a state can extend its territorial sea up to 12 nm. USA during a period used to challenge this by sending warships to countries which declared a territorial sea beyond 3 nm but now even USA has promulgated a 12 nm rule.





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# Network Freights Forwarding Limited



**Mr. Richard Nii Ayitey Addy**

Managing Director (MD), Network Freights Forwarding Limited

Around late 1980, Mr Richard Nii Adu Addy then a lecturer at the workers' college decided to establish his own freight and logistics company to offer services to the companies that required those services within the twin cities of Sekondi/Takoradi.

To fulfill this vision, Mr. Nii Addy contacted Mr. P.K. Mensah and Mr. Peter Fenan Dzakah, who were also leading members of the freight forwarding profession at that time, to help establish the company.

Without delays, Mr. Richard Nii Addy and the two colleagues took the bull by the horn and on 21st May, 2001 established the Network Freights Forwarding Limited with branches at the Tema, Airport, Accra, Aflao, Elubo and Paga borders.

The company has worked assiduously as a reliable freight forwarding company in Ghana working as the clearing and shipping agents for the Takoradi flour mill for the past 20 years successfully, with other companies.

Network freights is a leading provider in freight forwarding and haulage solutions in Ghana and boast

of both appropriate technology and adequate human capital to deliver any logistics requirement efficiently and promptly.

The company has a highly experienced management team with a lot of experience in the logistics industry.

Our skilled and knowledgeable team stands behind our commitment to the highest level of customer service and authorized business of:

- Freight forwarding and transportation
- Handling of goods in transit and warehousing
- Exportation of flour and wheat to Burkina Faso, Mali and Niger
- Processing of all customs documentation and clearance of all general goods.
- Rental of forklifts and other vehicles

## OUR MISSION

To become the world's preferred supply chain logistics company, applying insight, service quality and innovation to create sustainable growth for business and society.

## OUR VISION

Connecting people, businesses and communities to a better future by providing total logistics solutions through innovative and reliable service.

## VALUES

Trust and openness  
Excellence  
Mutual respect  
Customer orientation  
Quality

## LOCATION OF BUSINESS

Network Freight Forwarding Limited,  
P.O. box 1165 Takoradi  
Takoradi harbor area, Tidd building adjacent  
CalBank harbor branch (head office)  
GPS Address: WS-406-7148 Plankton Ln

## BRANCHES

- |                                       |                                     |
|---------------------------------------|-------------------------------------|
| ■ TEMA BRANCH<br>P.O.Box Od 102 Accra | ■ ELUBO BRANCH<br>P.O.Box 21 Elubo  |
| ■ AFLAO BRANCH<br>P.O.Box 312 Aflao   | ■ PAGA BRANCH<br>P.O.Box PG 13 Paga |



## ASSOCIATION

Ghana institute of freight forwarders, Ghana Shippers' Authority committee member.

## PRODUCTS/ SERVICES

Customs house agent, import and export, warehousing, transit, transshipment, free zone haulage, all customs processes and general merchant.



## CUSTOMERS/CLIENTS

Planation SOCFINAF Ghana Limited: Daboasi (Western region) Clearing of agricultural machine parts and fertilizer.

Takoradi flour mill: Takoradi (Western region) Clearing of raw bulk wheat into bonded warehouse for production of flour for local market and also export of flour to Burkina Faso, Niger, Togo and Mali.

Nuts for growth: Tamale (Northern region) Clearing of multipurpose shea and soy processing equipment.

**Groupe Hajjar:** Ouagadougou (Burkina Faso). Clearing of raw bulk wheat into warehouse and further transit to Burkina Faso by road.

## CHALLENGES

- Financial difficulty when it comes to pre-financing by the clearing company.
- Lack of transportation when the goods are in transit.

## EXTERNAL SUPPORT RECEIVED

Ghana Shippers' Authority  
Ghana Institute of Freight Forwarders.

## CONTRIBUTION TO NATIONAL ECONOMY

Payments of taxes, because we always pay or submit our annual tax to the Ghana Revenue Authority every year as directed by law.

Creation of employment, because we have a total workforce of 30 workers across the country.

## WHY DO BUSINESS WITH NETWORK FREIGHTS?

Our representatives are spread over a wide range of regional and geographical areas, forming one of the

best networks ever existed to deliver freight forwarding and logistics services. An insurance policy from a reputable insurance company is prepared [where needed] to cover all risks for loss or damage to general goods whilst in transit or in course of loading or unloading; and conveyed by owned trucks or hired trucks whilst on any road in Ghana.

## COST REDUCTION:

We work around the clock to eliminate delays to alleviate cost reduction; demurrage and rent at the various ports of entry will be a thing of the past.

Network freight has a flexible term of payment and reduces cost for regular and valued clients.

## ESTABLISHED TRUCK NETWORK:

We have a well-established and comprehensive delivery and pick up network in Ghana that provides a reliable and sustained transportation model that allows carriers to respond quickly to varied demands by our clients.

## IMPROVED COMMUNICATION

Network freights gives a regular report on vehicular movement and communicates with our client directly, providing accurate on-hand stock information and acts upon client instructions. We have instituted a driver award scheme; areas such as driver discipline, safety and security are rewarded to serve as a motivation to enhance the company's delivery performance.

## WAY FORWARD

Network freight was voted the best freight forwarding company of the year 2017 by Ghana logistics and transport awards (GLOTA) and was also voted the best logistics company in western region in the year 2018 by western regional coordinating council and western regional house of chiefs in recognition of its outstanding performance and support given to business environments. Network freight has also contributed significantly to Ghana and Burkina Faso, Niger and Mali relations in the trade of transit cargo from both Tema and the Takoradi port to their final destinations, network freight has also been a member of the Ghana shipper committee from the 2001 up to date.

The relationship between network freight and the ministries, department and agencies (MDAS) is very cordial for the delivery of excellent services for our clients. We clear consignments overnight and weekends on pre-entry basis and direct delivery cargoes. We also deliver 24/7 irrespective of the delivery location. We always process our documents ahead and advise clients to prepare in advance before vessel arrival to avoid unnecessary delays and cost.

# GHANA TAX STAMP AUTHENTICATOR (GTSA)



# GRA



## How to install

### Step 1

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### Step 2

Search for  
Ghana Tax Stamp  
Authenticator

### Step 3

Click on image  
and install

### Step 4

Click to open the App  
and allow it to access  
your device's  
location

### Step 5

Allow App to  
take pictures,  
record videos  
and manage calls

## The Ghana Tax Stamp Authenticator

- It is an android based App which assists you to scan the Excise Tax Stamp on products to determine the genuineness of the Stamp.
- It can easily be accessed at any location
- You need an android phone with at least 5.0 android capacity, internet data and internet enabled

## How to scan using the GTSA App

01

Tap the start button after installing the App to begin scanning

03

Click on the 'OK' button. You will receive the following ; Product Type, Origin, HR Code, Name of Organisation and Metric Name

02

Tap the start button after installing the App to begin scanning

04

Compare the phone information to the actual product in your hand

05

Report the difference in the scanned results and products to the nearest GRA office



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# GSA IN RETROSPECT - 2020



The Ghana Shippers' Authority (the Authority) continued to vigorously pursue its core mandate of promoting and protecting the interest of shippers in Ghana during the year of 2020. Below are highlights of the Authority's activities during the period under review.

In accordance with its plan to organise nationwide sensitization to build the capacity of exporters, the Authority organised Exporters' Fora for exporters in the Upper East and Northern Regions as well as the Kotoka International Airport (KIA). This followed similar fora in Accra, Takoradi, Kumasi and Somenya. The fora brought together exporters who were sensitised on the National Export Strategy and its relevance to their businesses by officials of the Ghana Export Promotion Authority (GEPA).

The Cocoa Marketing Company (CMC) in collaboration with the Authority, on 24th September, 2020, successfully negotiated with twenty four (24) shipping lines for the freight and conditions of shipment of Ghana's cocoa for the 2020/2021 crop season. The event which was held at the Ghana Shippers' House in Accra, makes it the second time it was hosted by Ghana. After lengthy negotiations, the rates and the conditions of shipment agreed for the 2019/2020 season have been maintained for the 2020/2021 season to all destinations across the world.

During the period under review, the President of the Republic of Ghana, His Excellency Nana Addo Dankwa Akufo-Addo, on 5th November, 2020 cut the sod for the

commencement of the construction of the Boankra Inland Port which is now called the Boankra Integrated Logistics Terminal (BILT). This followed the signing of a Concession Agreement between the Authority and Ashanti Port Services Limited (APSL), a consortium of Afum Quality Limited of Ghana and DSS Associates of South Korea who won the bid to construct the Inland Port.

As part of the Authority's strategic plan to deepen its relationship with stakeholders in the shipping and logistics industry with the overall objective of protecting and promoting the interest of shippers in Ghana, the Authority led by its Chief Executive paid courtesy calls to several institutions including the Food and Drugs Authority (FDA), Ghana Standards Authority (GSA), the Inspector General of Police, Ghana Union of Traders Associations, among others.

During the period under review, the seventh in the series of the Maritime Seminar for Journalists was held in Accra at the Ghana Shippers' House on 16th September, 2020. The event was organised by the Authority in collaboration with the Ghana Journalists Association (GJA) under the theme "Contemporary trends and developments in Ghana's Shipping Industry."

In accordance with the Authority's efforts at removing non-tariff barriers within Ghana's transit corridor, the first of a nationwide training program on the transit trade for the Police Service was held for Divisional







Ms. Benonita Bismark of the Authority with the IGP Mr. James Oppong-Boanuh

Police commanders within the Ashanti Region in Kumasi on 21st November, 2020. It was aimed at sensitizing senior Police officers on the importance of the transit trade to the Ghanaian economy and the key role that they are expected to play in the area of ensuring a seamless trade environment while at the same time ensuring safety and security along the transit corridors.

The Authority working together with the Ghana Revenue Authority (GRA) and the National Insurance Commission (NIC) signed a Marine Cargo Insurance Protocol at a ceremony held at the Ghana Shippers' House on 23rd December 2020. The protocol is to ensure adherence to the Insurance Act, 2006 (Act 724) which requires that with the express exception of personal belongings all goods being imported into Ghana must necessarily be insured locally.

As part of its contribution to the transit trade, the Authority annually embarks on a fact-finding trip along the Tema-Paga transit corridor to ascertain some of the challenges trucks drivers encounter on the corridor. During year, the Authority undertook one of such trips and highlights of the findings include: Drivers not safe while resting by the roadside and also that they are exposed to robbery and or theft of cargo; some Police Officers were not wearing name tags; and there were disparities in axle load readings.

As part of the Authority's mandate in educating and sensitising shippers in Ghana on contemporary issues to make them more competitive, shippers across the country through the various Shipper Committees were sensitised on realigning their businesses for survival and recovery from COVID-19, standardisation and packaging for quality products, post Integrated Customs Management System (ICUMS) implementation, mandate of the Food and Drugs Authority (FDA) in

shipping related activities, among others.

To facilitate transit trade between Ghana, Mali, Niger and Burkina Faso, the Authority organised transit shipper committee meetings in Accra and Takoradi with representatives from various stakeholders in the transit trade value chain to discuss transit trade challenges and how to address them. The meetings, among others, appealed to the Bank of Ghana to encourage banks operating in Ghana to trade in CFA to enable transitters from the landlocked countries transact business without

hindrance.

During the period under review, the Authority participated in the Ordinary Steering Committee Meeting of the Union of African Shippers' Council (UASC) from the 19th to 22nd February, 2020 in Douala, Cameroon. The meeting, among others, discussed and adopted plans and programmes of the UASC for 2020, reviewed activities of the Secretary-General for the financial year 2019 and the implementation of the resolutions and recommendations of the Steering Committees held on 29 - 30 January 2019 in OWENDO, Gabon and 13 - 14 June 2019 in Kinshasa, DRC.

During the period under review, the Authority held meetings with trade associations to understand their business concerns and to also deepen the Authority's relationship with them with the ultimate goal of protecting and promoting the interest of shippers in Ghana. The Authority had engagements with the Sea-Freight Pineapple Exporters of Ghana (SPEG), Ghana Vegetable Exporters Association (GAVEX), Ghana Assorted Foodstuffs Exporters Association (GAFEA) and the Ghana Root Crops and Tubers Exporters Union (GROCTEU).



Technical working Committee meeting





Donation to Princess Marie Louise Hospital

The Authority continued to embark on its Shipper Visitation/Outreach drive in order to get first-hand information on some of the challenges that importers and exporters face in the course of their business transactions. Some of the concerns raised by shippers during the visits were on intermittent rainfalls for the growth of fruits and vegetables, limited access to cartons in packaging for exports, bureaucratic procedures and delays in obtaining licenses, fluctuations in exchange rates, COVID-19's negative impact on businesses among others. The Authority, during the visits, encouraged shippers to report their shipment challenges for redress.

The Authority was adjudged the Trade Facilitation Company of the Year 2020 at the 3rd edition of the Ghana Business Awards. The award was in recognition of the role of the Authority in protecting and promoting the interest of shippers in Ghana. The Chief Executive was also adjudged winner of the 2020 Woman of Excellence (Public Sector) Award for her role in leading the Authority to make major interventions in addressing concerns of shippers in Ghana. She won two additional awards for her role in the Authority's corporate social responsibility efforts and for her contribution to national development.

In spite of challenges posed by the COVID pandemic the Authority achieved most of its set targets for the year 2020 and there is no doubt that these achievements would ultimately contribute to the attainment of the Authority's vision of becoming a world class service organisation that ensures for shippers in Ghana quick, safe and reliable delivery of import and export cargoes by all modes of transport at optimum cost.

In accordance with its corporate social responsibility policy, the Authority embarked on several activities as a way of supporting or giving back to its stakeholders and the society:

- Donation to the Princess Marie Louise Children's Hospital of Accra five (5) unit of Air Conditions to 5<sup>th</sup> February, 2020 assist with the running of the Hospital.
- Donation of twenty (20) boxes and one hundred (100) gallons of liquid and gel sanitisers to the Greater Accra Regional Hospital (Ridge Hospital) and Tema General Hospital on 16<sup>th</sup> April, 2020;

- Donation of bedsheets and gallons of liquid soaps to the Effia-Nkwanta Hospital Regional Hospital in Takoradi in the Western Region and the Ejisu Government Hospital in Kumasi in the Ashanti Region.
- 90% completion of Elubo freight park, a project which is a collaboration between the Authority and Jomoro Municipal Assembly. It is expected to serve as a rest stop for transit truck drivers who haul goods between Ghana and La Cote d'Ivoire and beyond.
- Annual sponsorship of two needy but brilliant female students studying BSc. Marine Engineering at the Regional Maritime University;
- Donations to stakeholders such as the Maritime and Dockworkers' Union (MDU), the Ghana Journalists Association's (GJA); Traditional authorities in the Greater Accra and Ashanti Regions; Akropong School for the Blind, Maritime Studies Students' Association (MASSA) Library project; the Chartered Institute of Logistics and Transport (CILT), etc.





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## EMPOWERING WOMEN AS LEADERS TO SECURE A SUSTAINABLE MARITIME INDUSTRY

*By Sylvia Asana Dauda Owu, President, Women in Maritime of west  
and central Africa (WIMOWCA)*

### BACKGROUND

Today, all oceans related activities, in particular the maritime industries, both seagoing and shore-based, are facing many challenges. These include the need to respond to climate change and other environmental issues, economic, security and conflict related crises, as well as the problem of shortages in personnel to work on ships.

There is also a call to move rapidly to address the impact of the technology on ships and shipping – sometimes called the 4th industrial revolution.

To successfully meet all these needs there is a pressing demand for skilled workers and competent innovative leaders in all areas of marine activity. We are in an era of immense change and any institution or company that does not invite diversity and support the

potential contribution and leadership of qualified women will be left behind.

Although the number of women graduating from universities and other educational and training institutions with oceans and maritime programmes has increased rapidly in the last few decades, their engagement, retention and promotion to leadership in all areas of ocean activities, particularly the shipping related maritime sector, has lagged. This is the case not only at the seagoing-seafarer level, but also in the numerous connected activities in ports and logistics, as well as legal and other services.

While explanations for this slow progress (the “gender gap”) vary depending on the specific area of activity, the key point is the failure of the maritime industry to attract, employ and retain women as

employees and also promote and support women in leadership roles represents a significant lost opportunity.

The importance of making changes to embrace and support diversity was emphasized by Kitack Lim, the Secretary General of the International Maritime Organization (IMO) in a statement about the theme for World Maritime Day 2019 “Empowering Women in the Maritime Community”: “Empowering women is not just an idea or a concept. It is a necessity that requires strong, positive action to address deep-seated structural, institutional and cultural barriers.” More recently at Nor-Shipping 2019, with its focus on technology, innovation leadership, the Secretary-General said that “a diverse industry is a sustainable industry.”

The need for greater diversity and



specifically ensuring equality for women to help achieve global socio-economic and environmental sustainability has been the subject of many statements and programmes at the international level. It is one of the UN Sustainable Development Goals for 2030 (SDG 5 – Gender Equality). One of the key measures or indicators for progress on achieving this goal is the “Proportion of women in managerial positions.” Despite many efforts, a wide gender gap persists in the maritime industry.

There has been over 30 years of action taken at the international level in the maritime sector. For example, in 1983 the IMO established the World Maritime University (WMU) to help build global capacity in the maritime sector. In 1988, the IMO established a women in maritime gender and capacity-building programme, at a time when very few maritime training institutions admitted women.

Even before these and other institutional responses, in 1974 women leaders involved in shipping and trade formed a support network, now known as the Women's International Shipping & Trading Association (WISTA). Today WISTA has national associations in over 40 countries with over 3000 members.

However, there is a lack of data regarding how many women, other

than those working or seeking work as seafarers (it is estimated that only 2% are women) are working in the maritime sector. In part, this is because of the diversity of occupations involved, including port management, financing, logistics, insurance, maritime lawyers, maritime administrations, regulators. In fact, the need for up to date information on the numbers and position of women in the oceans and maritime fields across all sectors was a priority recommendation of the recent 3rd international conference hosted by WMU on “Empowering Women in the Maritime Community”.

Nevertheless, the many women maritime leaders who spoke at the Conference provide testimony and excellent examples of the change that is gradually taking place today.

### **WHY IS LEADERSHIP AND PARTICIPATION OF WOMEN GOOD FOR BUSINESS?**

There is ample evidence that

investing in women is the most effective way to lift communities, companies, and even countries. Countries with more gender equality have better economic growth. Companies with more women leaders perform better.

In the maritime industry, there is an increasing awareness of the importance of the impact of women as leaders. For example Lloyd's list of the Top 10 Women in Shipping in 2018 commented that “From finance and insurance to politics, dry bulk and oil, women are increasingly making their mark in a historically male-dominated shipping industry. We look at the impressive outcomes achieved by just 10 of these powerful women.”

As mentioned above the maritime industry has been facing many challenges including the impact of technological change as never experienced before. Increasing gender diversity means an exposure to a variety of new ideas and inspiration by persons of different backgrounds. Conventional approaches are no longer effective. It requires “transformational leadership” where a leader encourages and inspires his/her teams to come together and to solve problems or come up with solutions to move forward.

As recently noted by the Secretary-General of the IMO, “Gender balance is not a women's issue, it is a business issue. Studies have







repeatedly shown that organizations that have a critical mass of women in leadership perform better and are more profitable.” Research also suggests that women leaders are more conscious about a healthy working environment for all and zero tolerance for harassment at work. The latest research shows that women's leadership generally positively affects a firm's performance, in particular sales performance.

### **CAPACITY BUILDING TO EDUCATE MORE FEMALE LEADERS**

Explanations for the relatively slow progress on this issue in the maritime sector vary. Certainly, access to education, training and capacity-building as well as identifying and eliminating the physical and social barriers that prevent women from participating are pre-requisites for progress.

WMU has proven that it is possible to make change to promote women in the maritime industry in a relatively short period of time. Until the late 1990s, female students made up less than 5 per cent of the WMU Malmö campus intake. In 2018, the proportion of female students rose to a third of the annual intake in the Malmö campus and 50 per cent in the MSc programme in International Transport and Logistics (ITL) in the Shanghai campus. Since the establishment of WMU in 1983, out

of the total of 4,919 graduates, 1,029 have been women (approx. 20 per cent).

Diversity in the workplace and gender diversity in leaders are important for future maritime and ocean communities. Both men and women are responsible for the future, the oceans, and the children. With a global maritime network of nearly 5,000 alumni from 168 countries, WMU will continue to promote gender equality by educating future maritime and ocean leaders in support of the UN SDGs, in particular Goal 5 (gender equality) in the maritime and ocean sectors.

### **THE AFRICAN PERSPECTIVE**

The blue economy has quite rightly been described as the 'New Frontier of the African Renaissance'. Its potential for a continent on which almost two thirds of its states have a coastline, whose trade is 90 per cent sea-borne and whose lakes constitute the largest proportion of surface freshwater in the world, is enormous.

Indeed, its potential runs into many trillions of dollars and promises to combine enormous economic growth with environmental conservation, if stewarded properly.

Women have an unrivalled opportunity to drive the

industrialization of Africa's oceans, according to Nkosazana Dlamini-Zuma, the former African Union chairperson.

The Africa Union's Integrated Maritime Strategy (AIMS 2050) provides a robust roadmap to fully exploit the potential of its oceans and seas and the first Sustainable Blue Economy Conference in Nairobi offered African nations the opportunity to solidify this continental framework.

It is significant to mention that the full potential of Africa's blue economy can only be reached if it is truly inclusive, allowing all people in society to reap the dividends on offer from the oceans, seas, lakes and rivers of the continent.

Women must be at the heart of this inclusivity. Gender equality and women's empowerment is at the heart of all African Union (AU) policies and actions and the blue economy is a fertile ground to further women's role in this transformative field.

The AU at its 31st Ordinary Summit in Nouakchott adopted its first Continental Strategy for Gender Equality and Women's Empowerment (2017-2027) to accelerate the Agenda 2063 into reality for the millions of women and girls across the continent.

The first pillar of this strategy is aimed at achieving economic autonomy for women through maximizing outcomes and opportunities for them. The blue economy is one such target.

Women have not always been able to fully enjoy the rewards of the growth in Africa's economies and the roles they have played in helping expand sectors across the continent are gaining greater recognition.

The AU is committed to ensuring this is not the case with the blue



economy and is advocating for women to be more involved in marine industries across Africa. The AU currently works with women's networks in this field, including among others Women in Maritime Africa, Women's International Shipping and Trading Association and Women in the Maritime Sector in Eastern and Southern Africa.

As delegates were informed at the Nairobi conference, several initiatives are being pushed for women in the blue economy. For instance, to help them become sea cadets, lead port operations, increase the number of women in the industry, become captains of ships, celebrate their accomplishments and leaders in the industry, expand their roles in shipping, fishing and other sectors of the marine industry.

Efforts are being made to sure that the blue economy is an inclusive one for women. Agenda 2063 calls for inclusive economic growth and it should be ensured that women are included in that growth and within the blue economy.

At present, the marine industry in Africa is male dominated, but women are working collaboratively

with men to find a voice within it.

This is especially important now as women are seen deciding to come together to play their part in the blue economy and take their dividend from it. Across Africa they are joining groups to promote and support the role played and yet to be played, in the marine industry.

The AU welcomes and fully supports these and similar activities as they can only be good for women, for the promotion of inclusivity and the blue economy as a whole.

The Sustainable Blue Economy Conference in Nairobi offered an opportunity for all blue economy stakeholders in Africa and from other countries, to not only hear about the key role women can play in the blue economy, but help suggest and support ways and means to expand those roles and to ensure that women are truly and fully included in Africa's blue economy and able to reap its rewards. Several events will be held to promote women's role in the blue economy and are anticipated to help leaders rally behind women's initiatives in the industry.

Together, heads of state, ministers, policymakers, civil society groups and other stakeholders must come together to honour commitments made to inclusivity in the blue economy and guarantee that women are not left behind as Africa's 'New Frontier' is opened up. Bold and transformative initiatives must therefore be created to accelerate women's economic empowerment and leadership in this field.

It must also be pointed out that the subject in discussion is not just about women's roles in developing the potential of the oceans, seas, lakes and rivers around the world. It goes well beyond this.

By showing that women can succeed and thrive as entrepreneurs and independent active agents of change and growth in the blue economy, women can be inspired in all other sectors of society. If they can succeed in one economy, why not in another? If a woman can rise to the top in a sector of the marine industry, she can rise to the top in, for example, the finance or retail industry, to name just two.

The AU helps in giving women a voice in all industries, especially those which are non-traditional or male-dominated.

## CONCLUSION

The global movement for gender equality and women's empowerment has broken new ground in recent years, making headlines in all sectors and in the maritime industry as well. Implementing strategies and initiatives that enable the industry to embrace the gender diversity is critical in recent times more than ever!





# GHANA SHIPPERS' AUTHORITY



## BACKGROUND

The Ghana Shippers' Authority (GSA) is a state agency operating under the auspices of the Ministry of Transport. It was established in 1974 by NRCD254 and has over the years collaborated with private and public organizations in the maritime industry to pursue its primary objective of protecting and promoting the interests of shippers in Ghana in relation to port, ship and inland transport problems in order to ensure safe, reliable and cost effective cargo handling.

## SERVICES TO SHIPPERS

- Sensitising and empowering shippers and stakeholders in the shipping and logistics sector through programmes such as open fora for trade associations, annual seminars for journalists, biennial maritime law seminars for Judges, workshops for truck owners and drivers, etc.
- Establishment of Import/Export Shipper Committees across the country to enable shippers and shipping service providers interact regularly in order to resolve challenges confronting their businesses;
- Negotiation of freight and port charges of shipping service providers on behalf of shippers;
- Establishment of Shipper Complaints and Support Units at the country's entry points to provide real-time assistance to shippers engaged in cross-border trade.
- Negotiation and monitoring of service standards of shipping service providers;
- Conducting research on emerging issues in Ghana's maritime transport industry;
- Facilitation and promotion of the Transit Trade along Ghana's transit corridor;
- Advocacy in matters affecting shippers such as Implementation of IMO Sulphur Regulations 2020, Terminal Handling Charges, payment of VAT on transit services and levy on transit exports, etc;
- Intervening, investigating and finding solutions to recurrent shipment problems such as loss/damaged cargo, late arrival of shipping documents, cargo insurance claims, illegitimate charges, shortlanding of cargo, etc.
- Representation of the interests of shippers in the deliberations of international bodies such as IMO, WTO, UNCTAD, Global Shippers Forum, etc.
- Provision of infrastructure such as the Takoradi Logistics Platform project, Boankra Inland Port project, Akatekyiwa Freight Park project, Shippers Centres, etc to support the shipping and logistics sector.

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## STREAMLINING BUREAUCRATIC BOTTLENECKS ALONG GHANA'S LAND BORDERS TO TAKE ADVANTAGE OF THE AFRICAN CONTINENTAL FREE TRADE AREA (AfCFTA)

By Abdul Karim Muhsin, Ghana Shippers' Authority

### INTRODUCTION

It is said that great civilizations thrived on trade. Every industrial nation today has become what it is through trade. Mention can be made of the United States of America, the United Kingdom, Italy, Canada, etc. All these countries and many other civilizations developed through industrial revolution which was premised on trade.

History has it that the desire for new trade partners is what resulted in the colonization and partitioning of Africa. It is therefore imperative for stakeholders in the import and export business to strive and make Ghana get optimum benefit in the AfCFTA agreement. This is because it is the key to our industrial growth and development.

Intra-African Trade has always been a target of West African

countries through the Economic Community of West African States (ECOWAS). The signing of the AfCFTA agreement has come as a feather in our cap.

This target of enhancing trade and enlarging the African Market, one cannot say has been achieved, even though a lot has been done in that regard. It should be mentioned that Africa is pursuing an integration agenda as a collective development and transformation strategy leading to the eventual creation of a continental market.

Regional integration helps develop larger markets, foster greater competition and improve policy stance in many areas of the development agenda. Indeed, the pressure of globalization is forcing firms and countries to seek

efficiency through larger markets and enhanced competition. A modern manufacturing plant will have to produce a larger output beyond the low level of domestic demand that a single underdeveloped country can absorb. Pooling economies and markets together through regional integration thus provides a sufficiently wide economic and market space to make economies of scale possible.

To this end, African countries have established the African Union, created various Regional Economic Communities (RECs) and have held at heart the ideals of the Abuja Treaty establishing the African Economic Community and the Constitutive Act of the African Union.





are critical for growth. This is a driving force behind economic development. Consequently, if trade is a vehicle for growth and development, then removing the barriers that inhibit it can only help increase its impact. Thus, free trade is an important instrument for removing such impediments and promoting greater levels of trade among African countries.

implement trade agreements with each other. The most important would be for the harmonization of tariff regimes and the removal of non-tariff barriers.

It is estimated that trade between Ghana and Nigeria grew from US\$15 million dollars before the year 2000 to about US\$130 million dollars as at 2010 (<https://comtrade.un.org>). This, if replicated with La Cote d'Ivoire and other countries would be a great milestone achieved. Barriers to regional trade also apply to global trade, therefore, addressing regional trade barriers and strengthening trade integration would help countries to integrate into world markets as stated earlier.

In this context, the RECs are pursuing integration through free trade and developing customs unions and a common market. Eventually, these efforts are expected to converge to an African Common Market (ACM) and an African Economic Community (AEC) where economic, fiscal, social and sectoral policies will be continentally uniform. Through such an economic marketplace, Africa can strengthen its economic independence and empowerment with respect to the rest of the world.

A major aim of these efforts is to expand intra-African trade by breaking down tariff and non-tariff barriers and enhancing mutually advantageous commercial relations through trade liberalization schemes because trade has made and will continue to make a tremendous contribution to the economies of many developed and developing countries.

Trade enables countries to specialize and export goods that can be produced at a cheaper cost in exchange for what others can provide at a lower cost. Trade also provides the material means in terms of capital goods, machinery, raw and semi-finished goods that

#### HOW FAR GHANA HAS COME IN ACCESSING THE AFRICAN MARKET

Since the formation of ECOWAS, its main agenda has been free trade or trade liberalization within the ECOWAS sub region. However, not much has been achieved largely due to disagreement over tariffs which could easily be harmonized for the benefit of all when leaders put their heads together.

If West African countries strive to remove trade barriers (both tariff and non-tariff) and trade amongst themselves, they are in effect enlarging the African market and positioning African countries to take advantage of continental trade which will in turn propel them on to the global competitive market. Even though a larger trade agreement has come to superimpose on ECOWAS and the ECOWAS Trade Liberation Scheme (ETLS) most of the challenges and issues related to the ETLS also need to be surmounted through this new Trade Agreement.

The question that now arises is how does Africa, as a continent, practicalize this new agreement. The answer to this, will be for African leaders to effectively

#### ECONOMIC COMMUNITY OF WEST AFRICAN STATES (ECOWAS)

In 2019, the value of merchandise exports of ECOWAS, increased by 18.9% to reach US\$127.4 billion dollars and its imports reached US\$127 billion dollars, an increase of 32.9%. The merchandise trade balance recorded a surplus of 0.4 bln US\$ in 2019 as compared to a surplus of US\$11.6 billion in 2018. ECOWAS's intra-regional total trade amounted to US\$20.3 billion, that is 9% of total exports and 7% of total imports. With regard to Sustainable Development Goals (SDGs) regions, the main export merchandise destinations were Europe (40.6% of total exports), Sub-Saharan Africa (16%), and Southern Asia (15.6 %). The main origins of imports were in Europe which constituted 37.5% of total imports..

In effect, these statistics indicate that African countries need to do more in terms of trade facilitation and trading amongst themselves. Africa is mostly credited with identifying challenges but doing little to resolve them.

Mr. Seth Terkper, the former Finance Minister of Ghana stated in



AfCFTA Secretary - General Wamkele Mene

his presentation of the budget statement in 2014 that, all West African monetary zone countries have signed onto the ECOWAS Trade Liberalization Schemes (ETLS), yet intra regional trade remained low. He further stated that challenges facing the implementation of the scheme included poor infrastructure, the existence of high primary complementary export commodities and non-tariff barriers. (Daily Graphic Nov. 26, 2014 edition).

This admission should therefore serve as a catalyst for Governments to make efforts towards addressing these challenges and break the cycle of always identifying problems and not solving them. This step would make AfCFTA a success because it is larger in scope than the ETLS with the possibilities of much larger challenges.

Critical of this challenge also has to do with currency and other trading blocs already in existence. Therefore, the need for a common currency to do away with the multiple currencies in Africa is critical to the sustenance of AfCFTA. The various regional blocs like Southern Africa Development Community (SADC), East African Community (EAC), Common market for Eastern and Southern Africa (COMESA) and Economic Community of West Africa (ECOWAS) should all be

synchronized.

### GOVERNMENT

The bigger burden of taking advantage of AfCFTA lies with the central Government. Government through its agencies should fashion out policies that are intended to remove impediments that make clearing and forwarding of goods from the various ports of entry/exit difficult in the country. Government should also work assiduously to develop infrastructure in the country; rail and road infrastructure being the key. Effective public sensitization on this new agreement needs to be vigorously pursued, especially to the business community whose “buy in” is what will make the state obtain optimum benefit of this agreement.

Collaborative efforts between public and private sectors in terms of the infrastructure development like Build, Operate and Transfer (BOT) or Public-Private-Partnership (PPP) should be the key to unlocking this infrastructure drive.

### SHIPPERS AND THE BUSINESS COMMUNITY

Importers and Exporters (shippers) also play a major role in ensuring that African countries trade amongst themselves. They need to cooperate with the appropriate state agencies at the entry points. They need to present genuine invoices and other documents to

help facilitate the work of revenue agencies and other regulatory bodies at the entry points.

They also need to declare the right quantities of goods they are carrying, avoid practices that cause delays at the entry points, e.g, unjustifiably questioning revenue agencies and other regulatory agencies in the conduct of their mandated duties.

Traders and the business community in Ghana need to understand that with the passage of this new agreement, Ghanaian traders and business people will now be in competition with other established businesses in other African countries with notably stronger economies than Ghana.

In effect, this calls for innovative ideas, stronger corporate practices, more effective and efficient supply chain practices, in order not to risk allowing our market to be flooded with goods from other counties, thus resulting in the denial of our teeming youth employment opportunities, revenue generation and the development of the country at large.

### GHANA REVENUE AUTHORITY (GRA) (CUSTOMS DIVISION)

The Customs Division of (GRA) is the Government mandated institution tasked to collect revenue for the state at the ports and entry points of the country. Their role in terms of trade facilitation is crucial in achieving a successful AfCFTA. It is therefore the view of the writer, that, playing such a role will require dedication, honesty and commitment to work by the staff and management.

It also requires constant education and awareness creation on the new policies of the revenue agency in order to keep shippers well





informed. I will urge the revenue agency to continue to improve their public education role so as to keep shippers in the know always. They should also monitor their staff to ensure that they always abide by the ethics of the institution.

### OTHER REGULATORY PUBLIC INSTITUTIONS

Aside the aforementioned Government agencies, there are other public agencies whose work is key in trade facilitation in Ghana and West Africa. Some of these agencies include; Food and Drugs Authority (FDA), Ghana Standard Authority (GSA), Plant Protection and Regulatory Services Department (PPRSD) of Ministry of Food and Agriculture (MOFA) and the Ministry of Trade and Industry (MOTI). These agencies help in trade facilitation and can also impede the free movement of goods by their actions and inactions. Therefore, stakeholders must be interested in the work of one another. All regulatory institutions must serve as watchdogs on one another.

Agencies must avoid deliberate delay tactics intended to frustrate Shippers and end up extorting money from them. Agencies must routinely monitor their staff who are stationed at the various entry points to ensure that, they do the work as expected of them.

The National Road Transport and Transit Facilitation Committees

(NRTTFC) formed by Borderless Alliance, Ghana Shippers Authority and other stakeholders should be given appropriate powers to constantly monitor and make reports on the activities of state agencies at the entry points for immediate action by Government. All these agencies must step up their public education function to make sure Shippers know the “dos and don'ts” in the import and export business.

It is in the light of the above that I single out the Ghana Shippers Authority (GSA) - a public agency mandated by law to represent and protect the interest of Shippers. The GSA should continue to work tirelessly and always be there for Shippers when the need arises. Thus, the establishment of the Shipper Complaints and Support Units (SCSU) at the five major entry and exit points of the country; namely Kotoka Airport, Elubo, Aflao, Takoradi and the Paga borders, is greatly appreciated. This has enabled the GSA to extend its services directly to the Shippers at these locations where shippers can be assisted in real time. It is the expectation of the writer that the SCSUs will be replicated at the remaining entry points of the country.

I would also like to urge the GSA to continue to intensify its efforts at promoting trade along the

Ghanaian corridor urge it to collaborate with the AfCFTA secretariat to rid the transit corridor of non tariff trade barriers.

### SECURITY SERVICES

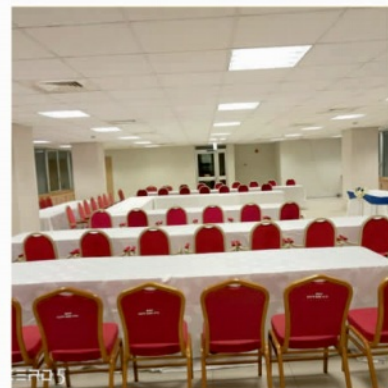
Security Services also play a critical role in trade facilitation at the entry/exit points. Border security is very essential in trade facilitation; so security services like the National Investigations Bureau (NIB), Ghana Immigration Service (GIS), Ghana Police Service and Ghana Armed Forces should always be on the look-out. Their work should be more towards facilitating trade than impeding it. The notion of the bullish security of yesterday should give way to the human centered security with the aim of creating a security that is in tandem with a modern-day democratic state which will help create a comfortable economic activity friendly to business and investment. They should avoid practices that tend to frustrate thus giving room for corrupt practices and extortion.

### CONCLUSION

Trade agreements have come to stay and Countries, Unions and Blocs are coming together to use their numbers as a bargaining chip to negotiate for better trade agreements with other nations and Blocs. The signing of AfCFTA is therefore timely, considering the difficult times that multilateral trade went through under the regime of President Donald Trump in the United States of America where the focus of his foreign policy was America First the emergence of the Covid-19 pandemic and its attendant impact on trade also lends support to the need for the trade agreement. Africans therefore need to take this trade agreement seriously and use it as an opportunity to leap on to the Global market considering the enormous resources nature has blessed Africa with.

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## SHOULD THE BILLS OF LADING ACT, 1961 (ACT 42) IN ITS PRESENT FORM BE IN OUR STATUTE BOOKS IN GHANA?

By A. G. Buabeng, IMO Consultant

### INTRODUCTION

The exponential growth in goods and commodities transported by sea cannot be over-emphasised. Such goods and commodities include dry bulk cargoes, liquid bulk cargoes, containerized cargoes and break bulk cargoes. Surely, an international regime to regulate the transportation of such goods and commodities carried by sea is a *sine qua non*.

The Hague Rules of 1924 is one of such international regimes regulating the carriage of good by sea. The Rules were implemented in post-Independence Ghana by the Bills of Lading Act (1961) (Act 42). Before touching on some of the provisions of the Act, the present writer deems it expedient to digress for a while and shed some light on the historical aspects of law relating to carriage of goods by sea before the adoption of the Hague Rules.

### Earlier Principles

Until, at least, the latter part of the

nineteenth century the general principle in English law and for that matter Ghanaian law was that the carrier was liable as an "insurer" of the goods entrusted to his care.

Thus the carrier was liable for cargo damage unless it could be proved that his negligence had not in any way contributed to the loss suffered or if the loss was due to natural causes directly and exclusively without human intervention otherwise referred to an Act of God or which were caused by the Queen's enemies.

Later further exclusions such as inherent vice of the goods, defective packing and jettison or general average sacrifice were recognised by the common law.

### Later in the nineteenth century

Later in the 19th Century, the dominating credo of the common law courts in their approach to contracts of which carriage of goods

by sea is a part was *laissez-faire* or freedom of contract. Shippers were at the mercy of shipowners and terms of contracts presented to shippers excluded liability for every conceivable act of shipowners. One of the main criticism levelled by shippers related to the insertion of clauses exempting shipowners from negligence caused by their servants and agents.

### Harter Act

Despite the constant complaints by traders, there was no sufficient impetus for an international solution. As a result, several countries went ahead and enacted domestic legislation with USA in the lead. In 1892, a Congressman from Ohio, Michael Harter introduced a Bill which later carried his name.

After extensive amendments in the Senate Committee, the Bill was passed the Senate and the House of Representatives without dissent



and was signed by the President on 13 February 1893 and took effect on 1 July 1893.

### Legislation in other countries

The passage of the Harter Act 1893 provided the requisite impetus to other nations. New Zealand, Australia and Canada all passed legislations modelled on the Harter Act.

Because of the cataclysmic impact of the World War I, future developments on the domestic front and internationally were abandoned. After the armistice in 1918, most countries were once again in a position to consider the regulation of private trade. In this connection, sight must not be lost of the significant contributions by the International Law Association and Comité Maritime International (CMI), a transnational association of maritime lawyers association founded by the eminent Belgian lawyer Louis Frank in 1897.

A set of uniform rules were drafted under the auspices of the Maritime Law Committee of the International Law Association at its meeting held in London in May 1921.

At its next conference held at the Hague from 30 August to 3 September 1921, the members attending agreed to the text of what was to become known as the Hague Rules.

The Hague Rules were considered at a diplomatic conference which

was specially convened by the Belgian government in Brussels in August 1924 and were signed as the International Convention for the Unification of certain Rules of Law Relating to Bills of Lading on 25th August 1924.

United Kingdom implemented the provisions of the Convention by passing the Carriage of Goods by Sea Act of 1924 which received Royal Assent on 1st August 1924 which was some three weeks before the final diplomatic conference and came into force on 1 January 1925.

Most territories which were British colonies or under British control including the then Gold Coast acceded to the Convention by exchange of notes at Brussels between November 1928 and December 191 1930 and such accessions took effect from June 2, 1931.

In the post-independence Ghana, the Hague Rules were implemented by the Bills of Lading Act, 1961 (Act 42) which repealed the Carriage of Goods Ordinance (Cap 242). The simple question being posed by the present writer is that should the Bills of Lading Act 1961 (At 42) in its present form be in our statute books?

In the 1920's most cargoes were shipped break bulk in cartons or other types of packing but such carriages is now a very small part of maritime trade. Accordingly, since the adoption of the Hague Rules,

courts throughout the common law have had to grapple with the meaning of "package" in view of containerization and the importance of bulk cargo carriage since World War I.

Despite the technological advances in the shipping industry, no attempts have been made in Ghana to amend the Bills of Lading Act despite some salient developments on the international plane.

The first amendment to the Hague Rules was the Visby Protocol which dealt with the following matters:

- a. new monetary limits are adopted, these being expressed in Poincaré francs;
- b. there are for the first time alternative limits; the first being the traditional limit per "package or unit" the second being based on weight;
- c. a special clause dealing with containerized transport;
- d. certain kinds of international reckless conduct which deprive the carrier the benefit of limitations;
- e. there are provisions linking recovery to the value of goods at the time of delivery.

Section 5 of the Bill of Lading Act 1961 (Act 42) stipulates that "Rule 5 of Article 4 of the Rules shall be read as though for reference to "£100" there were substituted "two hundred Ghanaian pounds".

To appreciate the full import of the Rule, the present writer wants to set out Article 4 Rule 5 of the Rules in extenso.

It stipulates as follows: "Neither the carrier or the ship shall in any event be or become liable for any loss or damage to or in connection with goods in an amount exceeding £100 per package or unit, or the





equivalent of that sum in any currency unless the nature and the value of such goods have been declared by the shipper before shipment and inserted in the bill of lading.

The declaration if embodied in the bill of lading shall be prima facie evidence, but shall not be binding or conclusive on the carrier.

By agreement between the carrier, master of agent of the carrier and the shipper another maximum amount than that mentioned in this paragraph may be fixed, provided that such maximum shall not be less than the figure abovenamed.

Neither the carrier nor the ship shall be responsible in any event for loss or damage to or in connection with, goods if the nature or value thereof has been knowingly misstated by the shipper in the bill of lading".

It will be appreciated that the new monetary limits set out in the Visby Protocol are 1000 francs per package or unit or 30 francs per kilo. A franc is not a unit of currency but "a unit consisting of 65.5 milligrams of gold millesimal fineness 900". The definition of "Poincaré" franc named after the French Prime Minister who held office in 1928 when the parity of the franc was fixed by French law.

Poincaré franc was used as unit of account in the Warsaw Convention

of 1929 and the Limitation Convention of 1957, among others. As already indicated above, under Bills of Lading Act 61 (Act 42), the limit "per package or unit" is two hundred Ghana pounds but is Ghana pounds a legal tender in Ghana now? What happens if a judge is confronted with such a situation?

It is manifestly clear that there is the need to amend this existing regime operative in Ghana for carriage of goods by sea.

The second amendment introduced by the Visby Protocol is spelt out above the first being the traditional limit per "package or unit" and the second being based on the weight. One of the shortcomings of the original Hague Rules is that there was no provision in the Rules in respect of bulk cargoes either dry or liquid. Surely such bulk cargoes cannot by any stretch of imagination be classified as a "package or unit". In the circumstances what happens if a cargo of crude oil or grain which are bulk cargoes are lost during carriage by sea and the owner of the bulk cargo has to claim from the carrier? This is a sixty four million dollar question.

The next shortcoming of the Bills of Lading Act 1961 (Act 42) which implements the original Hague Rules in Ghana is in respect of goods shipped in a container. It must be observed that at the time

the Hague Rules were drafted goods were not shipped in containers and consequently the Rules did not address the issue of goods stuffed in a container. The container revolution started in the 60s when the Rules were already in force. The Visby Protocol of 1968 has addressed the issue of goods stuffed in container.

Since the Bills of Lading Act which implements the original Hague Rules is silent on this point, what happens if a judge is confronted with such a situation. Will the whole container be described as a "package or unit" or will the various items stuffed in the container and enumerated in the bill of lading be described as a "package or unit" for the purpose of limitation? The present writer is not unaware of a number of decided cases in United States of America dealing with this point but these decisions are only of persuasive authority in Ghanaian courts.

The other issue covered by the Visby Protocol is that certain intentional or reckless conduct may deprive the carrier of the benefits of limitation. The original Hague Rules which was implemented in Ghana by the Bills of Lading Act 1961 (Act 42) is silent on this point. The drafters of the Visby Protocol deemed it expedient to incorporate such a provision which was modelled on Article 25 of the Hague Protocol to the Warsaw Convention concluded in 1955.

Incidentally, the Warsaw Convention of 1929 is the Convention for the Unification of Certain Rules relating to International Transportation by Air.

Another important amendment introduced by the Visby Protocol is that there are provisions linking recovery with the value of the goods at the time of delivery.

The Bills of Lading Act which implements the original Hague Rules in Ghana is conspicuously silent on this as there were no



provisions in the original Hague Rules dealing with this point.

The present writer has attempted to address above some of the shortcomings of the Hague Rules which was implemented in Ghana by the Bills of Lading Act 1961.

Further developments on the international scene after the Visby Protocol is the SDR Protocol of 1979 dealing with new monetary limit.

As already observed, the limit fixed at Visby was 10,000 gold francs per package or unit or 30 gold francs per kilo of gross weight of goods lost or damaged. The Protocol defined a franc as meaning a “unit consisting of 6.5 milligrams of gold millesimal fineness 9000” and further provided that the date of conversion of the sum awarded into national currencies should be governed by the law of the court seized of the case.

Unfortunately, the Poincaré francs system collapsed very soon after the Brussel Conference because of ravages of inflation.

### **Limitation amount Special Drawing Rights**

In an effort to promote some sort of uniformity, the CMI in 1977 appointed an International Sub-Committee to prepare proposals for reform based on the new SDR unit of account defined by the International Monetary Fund. (IMF) (Incidentally the SDR of IMF is a

basket of currencies currently based on the euro, Japanese yen, Pound sterling and the US dollars).

The draft proposals were once again submitted to the Belgian government which agreed to call a new diplomatic conference in December 1979. The Conference adopted, without amendment, the SDR Protocol to the Visby Protocol on 21 December 1979. This replaced the Poincaré franc with SDR and came into force on 14 February 1984.

### **Hamburg Rules**

During the 1970s, pressure mounted from both developing countries and major shipper countries e.g. United States, Canada, France and Australian for a full re-examination of the regime governing carriage of goods by sea.

Developing countries took the view that the Hague Rules had been developed by “Colonial Maritime Nations” in 1924 largely for the benefit of their own maritime interests and that the balance between the shipowner and shipper interests needed to be reconsidered.

The lead to the negotiation in 1978 of a Convention known as the United Nations Convention on the Carriage of Goods by Sea 1978 (Hamburg Rules).

The Hamburg Rules involved a major rewriting of the cargo liability rules rather than amending the

Hague Rules. Under the Hamburg Rules, shipowners are substantially more liable for loss or damage to cargo caused by them.

The Hamburg Rule entered into force on 1st November 1992. Ghana only signed the Convention but did not take any further steps to ratify or accede to same.

The traditional maritime countries did not like the provisions of the Hamburg Rules and consequently, the Rules did not attract widespread international support. Meanwhile the international regime for carriage of goods by sea is in fluid state.

“Some states still adhere to the Hague Rules, some to the Hague-Visby Rules (of which some have adhered to one or two further protocols on the package or unit limitation and some not); some have enacted the Hague Rules, and some the Hague-Visby Rules (with or without either of the two variants) into domestic law with or without adhering to the Convention); some have enacted none of these, with the result that they apply their domestic law unless their conflict of laws rules regime otherwise; some have adhered to the Hamburg Rules; and some have inserted into their national laws provisions similar to the Hague Rules, two Protocols or the Hamburg Rules sometimes with mixtures of these” (Vide Carver on Bills of Lading Third Edition page 626).

This state of affairs is highly unsatisfactory for international trade.

### **Rotterdam Rules**

As a result of this, a new Convention was negotiated and adopted on 11 December, 2008 by the General Assembly of United Nations. The Convention is known as the “UN Convention on Contracts for International Carriage of Goods Wholly or Partly by Sea”. It was opened for signature at a ceremony held on 23rd September 2009 at Rotterdam. Ghana is one of the 17





States which signed the Convention on the same day but it must be borne in mind that signature of the Convention does not of itself bring the Rules into force. A further step of ratification, acceptance or approval by the signatory states is required.

The Rotterdam Rules is the proposed new International regime for carriage of goods by sea. The new Convention required ratification or other mode of adoption by, at least 20 states. No reservations are permitted, ratifying or adopting states are obliged to denounce earlier conventions on international carriage of goods by sea to which they may be a party namely the Hague Rules and any amending protocol and the Hamburg Rules.

It is pertinent to observe that "reservation" means a unilateral statement, however phrased or named, made by a State when signing, ratifying, accepting, approving or acceding to a treaty, whereby, it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that state.

To permit a Convention to become honeycombed with reservations by a series of countries can jeopardise the whole exercise. Denunciation, on the other hand, takes place when a state expresses its desire not to be bound by a treaty or convention

which it has already ratified or acceded to.

The Rotterdam Rules are complex and extend to 96 Articles divided into 18 Chapters.

From 2009 to date only five countries have ratified the Convention. Whether the Convention will enter into force is a moot point. The gift of provision is denied to mortal man as the present writer.

As already observed, the Hague Rules implemented by the Bill of Lading Act 1961 (Act 42) is the predominant regime operating in the world today. The Hague Rules were updated by two Protocols, to wit, the Visby Protocol of 1968 and the SDR Protocol of 1979 which entered into force on 13th June 1977 and 14 February 1984 respectively. It is patent that the Bills of Lading Act in its present form is deficient. It does not address changes in the shipping industry. What are the possible options to Ghana then to ensure smooth facilitation of its international trade. The present writer will attempt to put down possible options open to Ghana.

These are as follows:

- a) amend the Bills of Lading Act 1961 by acceding to the Visby and SDR Protocols and implement them in our municipal law / domestic law;

- b) accede to the Hamburg Rules and introduce legislation which will adopt the Rules;
- c) amend the Bills of Lading Act so, as to adopt the provisions from either Convention which appear best suited to national requirements.

The present writer will humbly suggest that his preferred option will be option (a); the amendment of the Bills of Lading Act 1961 by acceding to the Visby and SDR Protocols and implement same in our municipal law at least for now and watch developments in other countries. This suggestion does not preclude the consideration of any other options by others more able and experienced than the present writer in the jurisprudence of maritime law to proffer any other option for consideration.

Before any option is adopted by Ghana, the present writer will humbly suggest that a Stakeholders' Forum comprising players in the maritime industry, insurers, the Ministry of Trade and Industry, the Ministry of Transport, Ghana Shippers' Authority, the Ghana Chamber of Shipping and the Ghana International Trade Commission be convened at the appropriate time to discuss the options and adopt one.

In any discussion, of the possible option open to Ghana, sight must not be lost of the regime being utilised by Ghana's major trading partners.

## CONCLUSION

It is the position of the present writer that the consideration of the issues raised in this short paper is long overdue and the earlier the issues are addressed, the better they will be for Ghana's international trade.

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## BAWKU ONION DEALERS' ASSOCIATION

### Background

Onion is widely used in Ghana and several countries in the preparation of stews and soups, accounting for around one-fifth of vegetable expenditure by households (van Asselt et al. 2018). The food habits of Ghanaians are such that a bulb of onion is used in almost every food preparation.

The onions commonly found in several markets in Ghana mostly come from Bawku in the Upper East Region of Ghana where the crop was first introduced around 1930s. It was first grown at Bugri, near Bawku in the Kusasi District of Upper East Region and from there it spread to other parts of the Northern and Upper Regions.

Despite being widely consumed, onion production in Ghana falls far short of demand. Consequently, there are imports coming from neighbouring Niger, Burkina Faso and Mali even during the peak local production season. Although trade statistics are notoriously weak, some estimates suggest 80-90 percent of onions in the local

market is imported (MoFA-IFPRI Market Brief No.5/Nov. 2020). The two main varieties cultivated in Ghana are Bawku Red and Galmi.

### The Bawku Onion Dealers' Association

The Bawku Onion Dealers' Association is made up of mostly men who import onions from Niger into the country and clear it at the Kulungungu Border in the Upper East Region. Most of the members of the Association belong to the Upper East Regional Shipper Committee of the Ghana Shippers' Authority where their experience in the cross-border trade in onions is shared among members to assist in resolving challenges that they face, especially those using the land borders in the Northern sector.

The Association was formed in 1981 after the 1979 revolution. It is made up of individual importers of onions. Most of the Association's members were initially farmers cultivating the crop. However, with a gradual increase in demand, the farming could no longer meet the market demand for the onions, hence the need for the imports to

augment the ones produced locally.

According to Alhaji Haruna Abdul Moomin, Treasurer of the Progressive Onion Dealers Association, Bawku Branch, most of the farmers also fell sick and others died from the violence of the 1979 revolution. They therefore decided to come together to form the group to address issues concerning onion farmers and help others who were affected by the outcome of the revolution.

The Association is affiliated to Progressive Onion Sellers Association and Accra Progressive Onion Sellers Association. They hold meetings at the market where most of their members are found.

The Association has a membership of fifty-two (52) onion dealers who import approximately 50-60 trucks of onions from Niger on daily basis, when the crop is in season. They supply the imported onion to market women in Bolgatanga, Tamale, Techiman, Kumasi and Accra. Alhaji Abdul Moomin noted members of the Association are





GSA staff with members of the Bawku Onion Dealers Association

usually under pressure to off load all their supplies on the market because the lifespan of the onion is very short.

According to the Treasurer of the Progressive Onion Dealers Association of Bawku the main challenge of their business is the extortion of money by some recalcitrant Police officers on the highways. According to him Police men extort monies from the truck drivers transporting their imports down south, thereby making them incur losses. He indicated that there are a lot of barriers on the transit corridor and that at each of the barriers Police Officers take monies as well some of the onions before allowing the trucks to pass. Failure to heed to these payments will result in delays and exposure of the onions to the vagaries of the weather.

On the solution to the challenge of Police Officers on the road Alhaji Abdul Moomin said their membership of the Upper East Regional Shipper Committee has been of tremendous assistance

because they get the opportunity to report the challenges at the meetings and follow ups are made on their behalf to resolve the challenges.

According to him, members of the Association also get the opportunity to meet senior officers of the Police service at the Shipper Committee meetings where they put their concerns across to them for redress. In other instances, they call on officers of the Ghana Shippers' Authority on their phones to assist in getting Police Officers to release their trucks to continue

their journey. More so, they get the opportunity to enjoy lectures of varied topics meant to improve on their businesses.

Another challenge members of the Association face is currency exchange. Whereas Ghana uses the Cedi, the French speaking West African Countries use the French CFA which makes cross border monetary transactions difficult. According to Alhaji Abdul Moomin, currency fluctuations on the part of the Cedi makes it difficult for planning and making projections. He said sometimes getting the CFA



is difficult thereby opening their members to black market operators who charge additional fee different from the ordinary market rate.

Alhaji Abdul Moomin said they would have preferred an E-Payment system common to both countries and user friendly like the mobile money system currently in operation in Ghana which will protect them from using physical cash with its attendant risk of having to deal with Tuareg robbers in the desert area of Niger.

With regards to processing documents for clearing of the onions from GRA Customs Division at the border as well as the various certificates that accompany the goods from Plant Protection and Regulatory Services Division (PPRSD) of the Ministry of Food and Agriculture (MOFA) Alhaji Abdul Moomin noted that members of the Association were not facing challenges.

According to him, members of the Association have not been resorting to financial institutions to grow their businesses largely due to the risky nature of the onion business. He said the business is



such that one could make huge losses and one could also make a lot of profit.

Regarding creation of employment, Alhaji Abdul Moomin revealed that the value chain of onion business creates a lot of opportunities for all those operating within chain; that is the farmer, importer, the wholesaler and the market women who are the distributors to the final consumer. All these people, according to him, depend on the onion business for their livelihood. They equally pay taxes which is used for the development of the country and their affiliated associations. He added that the Greater Accra Progressive Onion Sellers' Association has received

awards for regular payment of taxes.

### Conclusion

Alhaji Abdul Moomin noted that onions are highly perishable and will require specific and targeted value chain interventions or policies as is the practice in some countries. He therefore called on Government to give the onion trade the needed attention to not only enable farmers increase their production in order to reduce the country's dependency on imports, but find a way of storing the crop to reduce waste. He also requested for financial support to encourage the youth to go into the cultivation of the crop.



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