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UNLOCKING EXPORT OPPORTUNITIES: EXPLORING THE LEGAL AND REGULATORY ASPECTS OF OILSEED EXPORT IN NIGERIA

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INTRODUCTION

In 2024, with Nigeria aiming for a 3.0% economic growth driven by the non-oil sector, businesses play a crucial role in capitalizing on export opportunities. This article focuses on the legal and regulatory aspects of venturing into oilseed export in Nigeria and provides essential insights for businesses navigating this sector's landscape. Oilseeds, which are described as seeds from crops grown to provide oil,[1] include palm kernel, sesame seeds, melon seeds, soya beans, and groundnuts, among others, in Nigeria.

Nigeria's total exports of sesame seeds, soya beans, and cashew nuts reached a combined value of N475.92 billion Naira in 2023, according to the Nigerian Bureau of Statistics (NBS).[2] This amount, while not significant compared to the revenue generated from oil exports, signifies an opportunity for businesses to tap into new markets and increase their export revenue. According to the NBS, 99.36% of the total trade carried out of Nigeria in 2023 was done by sea to countries in Asia and Europe.[3] Thus, this article will focus on the legal considerations of exporting the Oilseeds by sea.

Quality, Compliance and Certification

There are two key international agreements which sellers of oilseeds and plant products in general must comply with; the Agreement on the Application of Sanitary and Phytosanitary Measures ('the SPS Agreement') and the International Plant Protection Convention (IPPC). The SPS Agreement sets out the basic rules of "food safety and animal and plant health standards when trading with different countries;[4] while the IPPC aims to prevent the spread of plant pests and diseases across borders, safeguarding agricultural resources worldwide. In Nigeria, the Nigerian Agricultural Quarantine Service (NAQS) is the Phytosanitary Authority tasked with the granting of Phytosanitary Certificates for the importation and exportation of plant products.

The NAQS was established by the Nigerian Agricultural Quarantine Service (Establishment) Act 2018 (NAQS Act) and plays a vital role in implementing SPS Agreements. The NAQS ensures quality assurance as well as the safe export of plant products by issuing Phytosanitary Certificates to exporters whose products meet international standards. The Phytosanitary Certificates verify that the plant products are free from pests and diseases and meet the specific sanitary requirements of the importing country thereby avoiding the possibility of the goods being rejected in foreign markets due to non-compliance with international SPS requirements. This collaborative effort between international agreements and national agencies like NAQS helps maintain a healthy global agricultural trade environment. Other local laws and Agencies involved in the regulation of export are the Customs and Excise Management Act, which handles the procedure for the clearance of the various types of cargo for export and the Central Bank of Nigeria, which regulates the foreign exchange transaction associated with the export of the cargo.

1 Oilseeds," accessed March 4, 2024, from Cambridge Online Dictionary, https://dictionary.cambridge.org/dictionary/english/oilseed.

2 National Bureau of Statistics, Foreign Trade in Goods Statistics Q4 2023 Report, March 2024, accessed March 5, 2024 from https://www.nigerianstat.gov.ng/pdfuploads/Q4_2023_Foreign_Trade_Statistics_Report.pdf.

3 Ibid

4 Sanitary and Phytosanitary Measures: Introduction - Understanding the WTO Agreement on Sanitary and Phytosanitary Measures," accessed March 12, 2024, from https://www.wto.org/english/tratop_e/sps_e/spsund_e.htm#top .

Contract of Sale

When conducting international business, sellers must select trade terms that can be precisely followed, and these terms are typically included in Contracts of Sale. There are various types of Contracts of Sale used in export trade, following the completion of a Soft Corporate Offer and the issuance of the Full Corporate Offer. The Contract of Sale serves as the key agreement underlying the export of goods and plays a central role in facilitating international trade worldwide. It is within this agreement that the seller and the buyer mutually agree upon the terms governing the supply of Oilseeds.

Each of these contracts contains specific trade terms relevant to a seller involved in an agreement for the sale or supply of Oilseeds. These terms are typically outlined in standardized contracts endorsed by organizations such as the International Chamber of Commerce (ICC Incoterms 2020) and Commodity Trade Associations (such as FOSFA), which have gained widespread acceptance over the years. These clauses address various aspects including the type of commodity being shipped, the place, time, and manner of delivery, the quantity and quality of the goods, the shipment period, and the price. The contract of sale may also include an arbitration clause, allowing arbitration proceedings under FOSFA or London Maritime Arbitrators Association (LMAA) rules to be initiated against the seller or vice versa in case of a dispute arising from the breach of any contract terms.

Among the commonly used ICC Incoterms in contracts for Oilseeds are Free On Board (FOB) and Cost Insurance and Freight (CIF). The most recent version of these terms is the Incoterms 2020. Under FOB terms, the seller's responsibility is to deliver the goods onboard the vessel designated by the buyer at the port of shipment for the account of the buyer. [5]
This implies that the seller fulfils their obligation to deliver the goods to the buyer once the goods cross the ship's rail at the specified port of shipment (for example ‘FOB Apapa’). Consequently, the buyer assumes all costs and risks associated with the loss or damage of the goods from that moment onward.[6] CIF terms, on the other hand, require the seller to arrange for and pay the cost of shipping, carriage, and insurance of the goods sold to their specified destination (for example, ‘CIF Guangzhou’). [7]

If a time for shipment has been agreed upon by the parties in the Contract of Sale, the seller must adhere to the shipment time or risk the buyer reneging or cancelling the contract.[8] The seller can mitigate this risk by including an optional extension clause in the Contract of Sale, which would extend the shipment period by a few days if the seller foresaw difficulty in shipping the goods within the agreed shipment period.[9]

Additionally, the seller can include a clause in the CIF Contract stating that their obligation to deliver the goods is fulfilled upon presenting the shipping documents. This ensures clarity in deliveryobligations and avoids any liability for what would ordinarily be considered a breach by the seller of their obligation to physically deliver the goods.[10] This aspect of CIF contracts was established in John Elue Construction Co. Ltd. v. Sarti & Ors. (1 NSC 439 at 446),[11] where the court emphasized that, under a CIF contract for delivery to a specific port, theseller's primary obligation is to provide the necessary shipping documents, not necessarily the physical goods themselves.

The court's reasoning, in this case, highlights that in a CIF sale, delivering the shipping documents to the buyer serves as prima facie evidence that the

5 David Tiplady, Introduction to the Law of International Trade (Oxford: BSP Professional Books, 1989), 67
6 L. Chidi Ilogu, "Understanding Shipping Terms and Incoterms 2000," presented at the Cargo Defence Fund Course, Principal Counsel, Foundation Chambers
7 David Tiplady, Introduction to the Law of International Trade (Oxford: BSP Professional Books, 1989), 39
8 Ibid at 6.
9 Jacques Covo, "FOSFA and GAFTA StandardForm Contracts and their Arbitration Systems," ASA Bulletin31, no. 2 (June 1, 2013)
10 Jacques Covo, "FOSFA and GAFTA StandardForm Contracts and their Arbitration Systems," ASA Bulletin31, no. 2 (June 1, 2013)
11 John Elue Construction Co. Ltd. v. Sarti & Ors. 1 NSC 439 at446

goods have been shipped to the designated port. Therefore, the buyer cannot reject the documents and demand the actual physical delivery of the goods as a fulfilment of the seller's obligation.[12]

Documentary credit

In the context of ensuring that payment for goods is made by the buyer in international trade, the seller must incorporate specific payment methods in the Contract of Sale that protect the seller's financial interests. Various methods of payment have been developed to protect the interests of parties. This article will focus only on the documentary letter of credit.A documentary letter of credit is a "commitment by a bank on behalf of the importer (foreign buyer) that payment will be made to the beneficiary (exporter/seller), provided that the terms and conditions stated in the letter of credit have been met as evidenced by the presentation of specified documents".[13] Therefore, under this method of payment, the parties are not concerned with actual delivery or non-delivery of the goods, they are only concerned with ensuring compliance on papers with the relevant terms of their respective contracts. [14]

12 Ibid
13 Conoil v Vitol SA [2018] 9 NWLR (pt. 1625) 463
14 FBN Plc v. StandardPolyplastic Industries Ltd (2022) LPELR-57684(SC) and Nasaralai Enterprises Ltd v Arab Bank (Nig.) Ltd [1986] LPELR-1942 (SC),
15 Olisa Agbakoba, "General Principles of Operation of Documentary Credits," in The Maritime Newsletter (1999-2001), chap. 6, 178, published by Olisa Agbakoba and Associates, 2006, Lagos, Nigeria
16 Akinsanya v U.B.A.Ltd (1986) 4 NWLR (pt. 35) 273 at 277
17 "Institute Cargo Clause B," accessed March 17, 2024, from https://www.msins.com/pdf/cargo/ICCB010182.PDF

These documents, however, must be in accordance with the terms outlined in the contract of sale. This structure reduces the risk the seller bears and protects him in cases where the buyer's financial standing is uncertain.[15] It is however key to note that the acceptance of documents under a letter of credit does not preclude the buyer from rejecting the goods subsequently if the goods on their arrival do not conformto the Contract of Sale.[16]

Insurance Cover

In a contract of sale governed by CIF terms, the seller is required to obtain marine insurance coverage against the buyer's risk of loss or damage to the goods during transit. This insurance typically extends until the goods reach the designated port of destination or the buyer's warehouse, as stipulated in the agreement between the parties. Marine insurance policies are structured into three sets of clauses: InstituteCargo Clauses (A), (B), and (C). When procuring these clauses, the seller must pay attention to key details such as the scope of covered risks and exclusions. For instance, under Institute Cargo Clause B, losses or damages resulting from the unseaworthiness of the vesselare not covered.[17] Additionally, the seller must provide accurate information to the insurer, as any omission of vital details may lead to the insurer repudiating the contract.

In the case of Edokpolor & Co. Ltd v. Bendel Insurance Co. Ltd,[18] for instance, a specific voyage policy was issued, stating that the goods were to be shipped from Hamburg, Western Germany, to Koko/Sapele Port in Nigeria. Despite this, the goods were ultimately shipped from Seville, Spain, instead of the designated Hamburg port as specified in the policy. The court ruled that if the insurance policy specifies a departure location or destination, the risk does not attach if the ship departs from a different location or sails to a different destination. In situations such as this, the seller must immediately inform the insurer of the change of route and written confirmation that the change has been noted and accepted.[19]

Contract of Carriage

Following the finalization of the Sales Contract between the seller and the buyer, the goods must be shipped to the importing country, typically by sea. The contract coveringthis mode of transportation is documented in a Bill of Lading (B/L), issued by the shipping line. The B/L serves three functions:

(a) Receipt for the goods: It verifies that the cargo has been loaded onto a specific vessel.

(b) Evidence of contract of carriage: The B/L outlines the terms and conditions governing the carriage of the goods between all involved parties (seller, buyer,and shipping line).

(c) Document of title: The B/L is also a document evidencing ownership of the goods described in it.[20]

As a seller, it's crucial to pay close attention to the specific obligations outlined within the B/L to ensure the successful completion of the international trade transaction. These obligations may include details such as proper packaging, labelling, and documentation requirements for the oilseeds to comply with customs regulations at the destination port.

Packaging

Sellers must also adhere to established packaging protocols for each product designated for carriage by sea. Concerning oilseeds, such products necessitate dry conditions and specific temperature controlto prevent the growth of harmful microorganisms. To document the initial qualityand condition of the oilseeds, sellers are advised to obtain pre-shipment samples at the loading point. Jute bags are recommended as packaging material for

18 Edokpolor &Co. Ltd v. Bendel Insurance Co. Ltd (1997) 2 NWLR (Pt.486) 131 at 133
19 Ibid
20 David Tiplady, Introduction to the Law of International Trade (Oxford: BSP Professional Books, 1989), 83

oilseeds within shipping containers, as they facilitate ventilation and mitigate mould growth. Additionally, sellers must avoid exceeding the container's designated weight capacity. Failure to pack properly could render the seller liable for any losses incurred by the buyer due to microbial growth during transit.

Carriage Regime

When the B/L is subject to the Hague, Hague-Visby, or Hamburg Rules (also known as the international rules of carriage), several key considerations can arise for the seller (who could also be referred to as the shipper in the B/L). For instance, the seller (shipper), in preparing the forms to be presentedto the shipping line (also referred to as the carrier) for the creationof the B/L, must ensure accurate information regarding the weight, quantity, and description of the cargo, particularly concerning the quality and/or condition of the cargo. This is because a B/L that incorporates the rules of carriage will typically state that the cargo has been shippedin "apparent good order and condition," [21] and if this is not the case, the seller(shipper) may breach an implied warranty that the statement in the B/L was accurate, potentially leading to liability for cargo claims from the shipping line/carrier or the buyers.

Additionally, Article III Rule 5 of the Hague Rules and Article 17 of the Hamburg Rules make specific provisions for the shipper's guarantee of the information provided in the B/L regarding the general nature of the goods, their marks, number, weight, and quantity as furnished by the shipper for insertion in the B/L [22]. Therefore, if the information provided by the shipper in the B/L is found to be inaccurate, the shipper may be required to indemnify the shipping line/carrier for any loss suffered as a result of inaccuracies in the B/L.

21 See Article 3 Rule 3(c) Hague Rules of 1924

22 See Article 3 Rule 5 of the Hague Rules of 1924 and Article 17 of the United Nations Convention on Carriage of Goods by Sea (Ratification and Enforcement) Act of 2005 (the Hamburg Rules)

Conclusion

In conclusion, there is undoubtedly a promising opportunity for businesses aiming to diversify and capitalize on the country's non-oil sector growth strategy. The exports of oilseeds, grains, and other plant products have demonstrated significant value, indicating potential for further expansion in this market. However, crucial to the success of export operations is the careful consideration of the legal and regulatory aspects at each stage of the process, from the sale agreement to adhering to international standards of plant products to satisfy phytosanitary authorities at the port or place of entry. Ultimately, by understanding and addressing the legal and regulatory considerations outlined herein, businesses can unlock the full potential of oilseed export in Nigeria, thereby contributing to sustained economic growth and market diversification beyond traditional oil revenues.

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