



Trade Corridor Process Mapping

Legal Analysis

and

Proposed Reform Action Plan

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Introduction

This report has been prepared in accordance contract no 7192804, signed between the World Bank and Nathan Associates Inc., on 8 August 2019, to implement the “West-Africa Trade Corridor Mapping” project.

The findings of the Trade Corridor Process Diagnostics conducted in six major African ports have been documented in three progress reports, with the objective to assist the trade communities in the region along selected trade corridors to improve the performance and efficiency of these corridors via the implementation of trade facilitation reforms.

The objectives of this project aim at identifying vital cargo inflow and outflow bottlenecks and recommending targeted reforms based on sound knowledge of the current environment including the multitude of factors that influence the processes and procedures along the trade corridors.

The current paper provides a legal analysis based on the findings of the progress reports, reviews the trade processes identified and mapped by the team for consistency with the WTO TFA, international, ECOWAS and WAEMU frameworks.

This paper will first list down the observations made at each step (processes at harbor, checkpoints and controls during transit, border crossing and transport till final destination) during the field missions and mentioned in the progress reports, which may be challenging from a legal perspective.

The second section wraps up the findings and examines their consistency with international and sub-regional standards.

The final section sets recommendations and designs an action plan for regulatory reforms.

With regards to compliance with the Trade Facilitation Agreement, it should be already noted that all countries along the corridors, when notifying the WTO of their category [A, B and C commitments], have informed of timelines for implementation (for categories B and C) as well as provided information about any capacities which need to be strengthened before they are able to fully implement the TFA provisions (category C). It appears that the timelines are quite different from one country to another, as well as the categories of provisions that are identified as needing assistance to be fulfilled.

As an example, procedures allowing the release of goods prior to the final determination of customs duties, taxes, fees, and charges are already in place in five countries (Burkina Faso, Mali, Niger, Nigeria and Senegal), while two others (Ghana and Cote d’Ivoire) have respectively committed to adopt them by 2021 and 2023, and Benin and Togo have not set yet definitive deadlines. Similarly, all

countries do not need assistance for the implementation of the same TFA provisions. Thus, a risk management system for Customs control is mentioned as already in place in Cote d'Ivoire and Senegal, while all other countries request assistance to establish it.

Although in line with the TFA, these factual discrepancies have a negative impact on the flow of goods along the international corridors, since each gap in the implementation of the TFA provisions between the countries across the corridors creates necessarily bottlenecks. Thus, beyond the key gaps identified between regional and international frameworks and the trade processes, it should be recommended to strive to take a more global approach in the implementation of the TFA, and to take the necessary measures to make coincide as much as possible the timelines of the nine countries of the corridors.

I. Key Observations from the Progress Reports

A general comment is that, while rules and procedures for importation, exportation and transit, and required forms and documents are published and websites exist (or are currently developed) in a majority of the countries to fulfil the requirements of the World Trade Organization Trade Facilitation Agreement Article I on Publication and Availability of Information, the procedures and processes stated on the websites are not regularly updated, and may not be guaranteed.

Moreover, ambiguities or unclear provisions that exist in applicable legislation lead to excessive discretionary powers of officials at all steps of the clearing and transport process, what is inconsistent with the provisions of Art. X of the GATT.

This section recaps the observations at each phase of the transport along the corridors, that may be challenging from a legal perspective.

A number of these problems are common to the majority of countries surveyed.

- The Single Window does not always include the functionality to process all steps of the import/export process by not allowing for the release of goods and electronic payments
- So far, manifests and other documents are not entirely paperless
- Conversely to the TFA which requires the review of formalities with a view to adopt measures for a rapid release of goods, the number of documents for import/export/transit is increasing in some harbors, as new regulations with specific requirements are implemented
- Lack of coordination between stakeholders, often due to a misunderstanding of procedures and the importance of information with respect to the whole process, entails unnecessary delays
- Customs bills shippers for overtime, even during normal business hours. In one port, trucks are limited in the port area to 2.5 hours in the morning and 1.5 hours in the evening
- Lack of automation and inter-connectivity between border agencies to ensure optimal operational efficiency through a single window platform in line with TFA Article 10.4
- Customs checks are often redundant while the port-security team that could be organized as a single process
- Lack of Border Agency Cooperation under TFA Article 8
- Customs joint border posts, whenever existing, are not operational
- Information sharing among Customs administrations on best practices, and Customs cooperation under TFA Article 12.1.1 remains minimal

- Customs escorts and convoys may be required for transit, and are not always limited to circumstances presenting high risks or when compliance with customs laws and regulations cannot be ensured through the use of guarantees
- Customs risk management approach remains underdeveloped, what may subject every cargo to 100% inspection
 - Lack of reward system to compensate compliant traders, such as trade facilitation measures for Authorized Operators, to further encourage non-compliant traders into the compliance fold as provided by TFA Article 7.7
 - Moreover, the absence of scanners in some harbors causes inspections to remain physical
- There is a lack of involvement of banks in the system to enable electronic payments of taxes, tariffs and fees
- Accessing the single window may be challenging due to unreliable internet connections, software glitches, and the inability of single window staff to fix them quickly
- Lack of transparency, especially on costs TRIE (ECOWAS Inter-State Road Transit Regime) is rarely used as it is perceived as too complex and due to the cost of the guarantee paid to the Chamber of Commerce
- Containers are not used for transit due to high security deposits to maritime transporters and due to issues around returning the empty containers
- Logistics services tend to become more expensive than before and are not very transparent. Fees may be charged even when service is not provided, shipping lines charge for cleaning a container independent of whether its dirty or damaged and terminal operators bill for handling charges
- Weighbridge staff at the port allow overloaded trucks to continue without paying fines or offloading the excess
- A bilateral cargo sharing agreement restricts the nationality of the transporters to the two participating countries (on the Lomé – Ouagadougou corridor) The quota system to allocate transit freight between Burkinabe and Togolese truckers not being compatible with a truck- rendezvous call-up system
- The axle-weight limits for trucks are seldom enforced. Moreover, the tolerance for weight varies by station, which further deters trade as fines can become high and unpredictable

II. Regional and Sub-regional Applicable Conventions

At regional level, all nine countries on the corridors are members of ECOWAS (whereas out of Ghana and Nigeria all are also part of WAEMU) as shows the following chart.

Membership of the countries in Sub regional organizations		
States	ECOWAS	WAEMU
Benin	X	X
Burkina Faso	X	X
Cote d'Ivoire	X	X
Ghana	X	
Mali	X	X
Niger	X	X
Nigeria	X	
Senegal	X	X
Togo	X	X

Both ECOWAS and WAEMU have adopted conventions and resolutions, with the aim to facilitate the transit of goods between their Members. These international instruments seek to regulate interstate road transportation, road transit of goods, waive customs duties as well as transit taxes from transit countries, and reduce the number of road checkpoints. However, these stipulations are far from being generally enforced.

ECOWAS States have concluded two conventions, regulating transport between its Members, both signed in Cotonou on May 29, 1982, namely:

- The Convention Regulating Interstate Road Transportation between ECOWAS Member States (A/P 2/5/1982) This Convention concentrates on vehicles rather than on transportation operations, the regime of which is left to domestic law (especially the rules laid down by the offices in charge of freight) or to contract law between shipper and carrier. It sets forth axle load (11.5 tons), dimensions of vehicles, and minimum periods for mechanical examination of vehicles.

The progress reports note that due to perfunctory controls and the lack of process standardization, this limit of 11.5 tons is generally overlooked, what leads to overloading, which in turn, diminishes road quality and time of transport.

- The Convention Relating to Interstate Road Transit of Goods (A/P 4/5/1982), sought to facilitate the movement of goods in the subregion. Goods are to be covered by the Interstate Road Transit Declaration in the standard ECOWAS Interstate Road Transit Logbook, but Partner States may impose additional documents. Goods shall be transported

in means of transport satisfying conditions set forth by the Convention in terms of markings, sealing, etc.

According to this Convention, security for payment of Customs dues is to be provided by a guarantee from a reputable financial institution affiliated with the West African Clearing House or any government-approved institution of a Member State. Moreover, transit offices at border points are not to carry out checks unless irregularities that may give rise to foul play are suspected. The guarantee is collected by the country of the point of entry of the goods, at the fixed rate of 0.5% of the value (CAF) of the imported goods.

However, the ECOWAS Inter-State Road Transit Regime, perceived as too complex, is not really used as operators refuse to pay for the guarantee (collected by the Chambers of Commerce), by fear of not getting reimbursed once goods have been delivered at their final destination.

Nevertheless, the terms used in the Convention are clearly mandatory (e.g. Art. 5: “*all goods shall be covered by the Inter-States Road Transit Declaration*”), meaning that opting out from this Convention by declining to pay the guarantee involves that technically, the goods in transit could be considered as imported in the country into which they enter.

However, the full application of the guarantee system established by the Inter-State Road Transit Regime will not be ensured unless electronic payments are developed and simplified, and the swift discharge of the guarantee is secured once the transit requirements have been satisfied.

The delays by Parties in ratifying these conventions, and the inadequate enforcement of their stipulations, have led to the further adoption of ECOWAS Resolutions (i.e. not binding), chiefly:

- The 1988 Resolution on implementation of program. Resolution C/RES. 1/12/88 on implementation of the program of the Higher Committee on Land Transport. Under the instrument, the ECOWAS Council of Ministers resolves the following:
 - Transit transport shall not, within the territory of the transit State, be subject to any Customs duties, import or export duties, or any special transit taxes levied by the said state. This statement is in reference to the 1965 New York Convention on Transit Trade for Landlocked Countries, and despite the fact that a few ECOWAS member countries did not ratify the Convention.
 - Partner States shall reduce the number of road checkpoints.

- Interstate road transport and transit conventions shall be ratified by all Partner States.
- Partner States shall enforce the agreed-upon axle load limitation of 11.5 tons and implement the ECOWAS international waybill also agreed upon.
- The 1990 Resolution on reducing the number of checkpoints in ECOWAS Partner States. Resolution C/RES 4/5/90, which raised again the issue of checkpoints by urging Partner States to reduce their numbers.

In addition to the ECOWAS conventions, WAEMU countries have adopted on December 16, 2005, a Regulation 14/2004/WAEMU which specified the “norms, dimensions and axle road limits, and the modalities for control and enforcement” and is very similar to ECOWAS A/P 2/5/1982 by establishing a limit axle load of 11.5 tons. However, stakeholders noted problems with the implementation and harmonization of this regulation on weight and axle load control. Most trucks are overloaded and, while checks at weight stations may end up in fines, trucks are not stopped or required to unload excessive weight.

Moreover, one sub-regional convention, and an additional protocol, have been adopted among some countries involved in the six corridors. While the first instrument is now obsolete following the entry into force of the ECOWAS rules, the latter (between Togo and Niger) may create overlaps with the more global regional regulations and pose problems of interpretation.

Accession to Ground Transport Sub Regional Conventions			
States	Niamey Convention on Road Transport (1970)	Abidjan Protocol on Inter-State Road Transport (1975)	ECOWAS Inter-State Road Transportation Convention (1982)
Benin	X		X
Burkina Faso	X		X
Cote d'Ivoire	X		X
Ghana			X
Mali			X
Niger	X	X	X
Nigeria			X
Senegal			X
Togo	X	X	X

- The Niamey Convention on Road Transport (1970)

On December 9, 1970, a Convention regulating road transport was concluded in Niamey, Niger, between Burkina Faso, Benin, Côte d'Ivoire, Niger and Togo. The Convention entered into force in 1978 due to belated ratification by Burkina Faso. International routes were designated in the Convention. It also set forth the maximum dimensions and weight of vehicles, signs, markings, etc. Vehicles were to load in one state only for foreign destination; operate through freight offices and

comply with Customs and police regulations for border crossings. A bilingual transit card was to be delivered to each vehicle in a format set forth in an annex to the Convention. ECOWAS rules have now rendered this instrument obsolete.

- The Abidjan Protocol on Inter-State Road Transport (1975)

On February 18, 1975 and based on the 1970 Niamey Convention not yet in force, Togo and Niger concluded in Abidjan a Protocol on road transport. The Protocol regulates interstate transport. Its main provisions are the following:

- Freight is distributed between the two countries: two-thirds for Niger and one-third for Togo for goods carried through ports and equally for other goods. Passenger traffic is distributed equally. Mixed traffic (goods and passengers) is prohibited.
- Axle load is limited to 11 tons (11.5 tons for ECOWAS and WAEMU), and maximum weight of vehicles is 22 tons and 30 tons for a truck plus trailer.
- Rules are specified for licenses, transit card, insurance, etc.
- Freight forwarders and other shipping agents shall adhere to the distribution key just described
- Transit routes are stipulated
- Vehicles of each country may operate only transit traffic in the other country. They are not authorized to engage into domestic traffic.

Both the 1970 Convention and the 1975 Protocol are significant for their orientation toward a non-market approach of traffic distribution, with quota systems administered by freight bureaus. It is likely that other bilateral agreements, similar to the Niger-Togo Agreement, were concluded and are still in force, but they have yet to be identified.

III. International Relevant Transport Conventions

The Members of ECOWAS and WAEMU are committed to deepen the integration of their economies, which implies to harmonize their legislations. Significant developments have already been achieved in this regard, not the least through the endeavor to harmonize e-commerce legislation in the region, the adoption of a common ECOWAS Customs Code by the Heads of State in December 2017, or the drafting of a directive on the harmonization of the Labor Laws in 2019.

Yet, economic integration and legislation harmonization also imply that the countries should be parties to nearly the same international treaties, especially when they pertain to the international circulation of goods.

Actually, besides GATT and the WTO Trade Facilitation Agreement, a number of international conventions have been adopted over the past decades to facilitate international transport of goods.

So far, no country part of this study is a party to three of these conventions, namely the CMR convention, the Convention on containers, and the TIR Convention. Even if this obviously does not create as such any variance in the legislation applicable at regional level, those countries could otherwise have leveraged from the facilitations these three treaties bring to international transport.

Disregarded International Transport Conventions

- The Convention on the contract for international carriage of goods by road; known as the CMR Convention of Geneva (1956)

Signed and ratified by 45 countries, this convention has notably established a standardized waybill, and more recently an electronic consignment note.

- The Customs convention on containers (1956-1972)

The Customs Convention on Containers is a United Nations and International Maritime Organization treaty whereby States agree to allow intermodal containers to be temporarily brought into their States duty- and tax-free. This Convention helps its Parties to resolve the many problems they face with the imported and exported empty containers.

- The Customs Convention on the international transport of goods under cover of TIR carnets (1975)

The Convention on International Transport of Goods Under Cover of TIR Carnets (TIR Convention) is meant to simplify and harmonize the administrative formalities of international road transport. As of December 2018, there are 76 parties to the Convention, including 75 states and the European Union.

The TIR Convention establishes an international Customs transit system with maximum facility to move goods:

- in sealed vehicles or containers;
- from a Customs office of departure in one country to a Customs office of destination in another country;
- reducing time-consuming border checks at intermediate borders;
- providing Customs with the required security and guarantees.

A more serious problem occurs from the fact that four other important transport conventions (namely: the Transit Trade of Landlocked States, the Vienna convention on road traffic and on road signs and signals, the International Convention on the simplification and harmonization of Customs procedures, and the UN Convention on international multimodal transport) are ratified by some of the States part of this study, whilst not by their neighbors, what creates some legal conundrums.

Significant Differences Among Countries in their International Transport Obligations

- The Convention on transit trade of landlocked states (1965)

This Convention imposes obligations on both land-locked states and on coastal states that ratify the treaty. It addresses international rules allowing for land-locked countries to transport goods to and from seaports.

Coastal states that ratify the convention (known as "transit states") agree to make arrangements with land-locked states that are party to the treaty that wish to transit goods across the territory of the transit state to or from a coastal port in the transit state. The transit states agree that they will not discriminate based on place of origin or destination of the goods being transported. The land-locked states agree to be responsible for any expenses that the transit states incur in supervising or protecting the transit of the land-locked state's goods.

This Convention has essentially been superseded by the United Nations Convention on the Law of the Sea, which contains similar provisions for transit arrangements to be made between coastal and land-locked states.

The different approaches to both conventions by each country epitomize the problems encountered. Out of the nine countries surveyed, Benin, Cote d'Ivoire, Ghana and Togo have not joined the 1965 Convention. Conversely, the same countries (plus Senegal, which is party to both) are parties to the Convention on the Law of the Sea [see Chart below].

This leaves unclear what are the reciprocal obligations of those countries bound by one treaty and not the other.

- The Vienna Convention on road traffic and on road signs and signals (1968)

Even if this Convention is about road safety and aid international road traffic. Even if it is only subsidiary to the management of the transit of goods, this treaty provides useful tools to increase road safety by standardizing the signing system for road traffic (road signs, traffic lights and road markings) in use internationally.

Cote d'Ivoire, Ghana, Niger, Nigeria and Senegal are parties to this Convention, while Benin, Burkina Faso, Mali, and Togo are out.

- The International Convention on the simplification and harmonization of customs procedures (1973)

Already revised, the Kyoto Convention has become the basis for effective, predictable and efficient customs procedures. It aims to:

- contribute effectively to the development of international trade by:
 - simplifying and harmonizing customs procedures and practices, and
 - fostering international co-operation
- combine the significant benefits of the facilitation of legitimate trade with appropriate levels of customs control;
- improve the effectiveness and efficiency of customs administrations and, therefore, overall economic competitiveness
- encourage investment and the involvement of small and medium-sized enterprises in international trade
- stimulate economic growth by facilitating trade.

This Convention obligates only Cote d'Ivoire, Nigeria, Senegal and Togo.

- The United Nations Convention on international multimodal transport (1980)

The 1980 Convention facilitates the orderly expansion of world trade by determining rules relating to the carriage of goods by international multimodal contracts. According to its provisions, a multimodal transport operator, defined as a person concluding a multimodal transport contract and assuming responsibility for it, is held to issue a multimodal transport document. It has to contain information on the goods transported under his/her responsibility and indicating the name of the consignor and the consignee, as well as the intended journey route. The multimodal transport document accredits for the receipt of the goods as described in the document. The responsibility of the multimodal transport operator for the goods under this Convention covers the period from the time s/he takes goods in his/her charge to the time of their delivery.

By establishing liability rules applicable to international multimodal transport of goods, this instrument ensures a fair balance of interests between operators that benefit from the limitation of liability and users of their services that obtain compensation in case of loss.

Among the nine countries in this study, only Senegal is a Party to this Convention.

Accession to Customs & Ground Transport International Conventions							
States	CMR (1956)	Customs Convention on containers (1956-1972)	Transit Trade of Landlocked States (1965)	Vienna convention on road traffic and on road signs and signals (1968)	International Convention on the simplification and harmonization of Customs procedures (1973)	TIR Convention (1975)	UN Convention on international multimodal transport (1980)
Benin	-	-	-	-	-	-	-
Burkina Faso	-	-	X	-	-	-	-
Cote d'Ivoire	-	-	-	X	X	-	-
Ghana	-	-	-	X	-	-	-
Mali	-	-	X	-	-	-	-
Niger	-	-	X	X	-	-	-
Nigeria	-	-	X	X	X	-	-
Senegal	-	-	X	X	X	-	X
Togo	-	-	-	-	X	-	-

IV. Complying with the WTO Trade Facilitation Agreement

The first multilateral trade agreement to be concluded since the WTO was established, once it enters into force the Trade Facilitation Agreement (TFA) is expected to reduce total trade costs by more than 14 per cent for low-income countries and more than 13 per cent for upper middle-income countries by streamlining the flow of trade across borders.

Favoring a practical and holistic approach, the TFA sets forth a series of measures for expeditiously moving goods across borders inspired by the best practices from around the world. Furthermore, the commitments of developing and least-developed countries are linked to their capacity to implement the TFA. Developing and LDCs evaluate their ability to implement the TFA by selecting one of three categories for each of the Agreement's provisions.

In notifying the WTO of their category [A, B and C commitments], they have been requested to provide timelines for implementation (cat. B and C) as well as information about any capacities which need to be strengthened (cat. C)

Category A denotes measures that the member will implement by the time the Agreement enters into force, or in the case of LDCs within one year after entry into force.

Category B specifies provisions that the member will implement after a transitional period following the entry into force of the Agreement¹.

Category C indicates provisions that require assistance and support for capacity building to allow the member to implement them after a transitional period following the Agreement's entry into force.

All nine countries along the six corridors, being already members of the WTO, have acceded to the TFA. In doing so, they have notified the measures they are able to implement in category A, as well as those measures that need a transitional period before being applied, including those for which assistance is requested.

The following chart displays, for the provisions that are most relevant concerning the cargo transport through the six corridors, the different global deadlines determined by each country for a full implementation of all TFA provisions. This table shows great disparities among the nine countries: the definitive deadlines for all categories in five countries range from end 2024 to end 2028. Three countries, although having notified indicative dates, have still to inform the WTO of the definitive deadlines, while one country has made no notification so far.

¹ All transitional periods notified in both categories B and C are still ongoing for all countries.

WTO Membership			
Countries	WTO/GATT	TFA	TFA Status (definitive deadline for the full implementation of all TFA provisions)
Benin	X	X	<i>No notification</i>
Burkina Faso	X	X	December 31, 2028 ²
Cote d'Ivoire	X	X	December 31, 2025
Ghana	X	X	September 22, 2025
Mali	X	X	December 31, 2026 ¹
Niger	X	X	<i>Most deadlines remain to be determined</i>
Nigeria	X	X	December 22, 2024 ³
Senegal	X	X	<i>Most deadlines remain to be determined</i>
Togo	X	X	<i>Most deadlines remain to be determined</i>
<i>A detailed compared notification breakdown by country and article (for those of specific interest in this report) is available in Annex A</i>			

Ultimately, a full and fair implementation of the TFA by all States along the corridors should suffice to enable a swift flow of goods from, through, and to all the nine countries part of this survey. However, this will necessitate a number of breakthroughs, including the alignment of national and regional legislation (especially the ECOWAS Convention Relating to Interstate Road Transit of Goods) and a change in mindsets among the actors. The TFA may therefore be understood and used together as a beacon, as well as a toolkit for improving the circulation of goods in West Africa. Recommendations will be made in this regard in the following section of this paper.

This section will mostly focus on the compliance with regards to the TFA requirements that are of particular relevance for the transit of goods.

Article 1: Publication

Article I of the TFA is utterly important for facilitating the operations of importers and exporters. It increases transparency by requiring Members to publish information related to import, export, and transit procedures, fees, and regulations, and to establish an enquiry point to respond to inquiries. The information on import, export, and transit procedures; form and documentation requirements; and enquiry points must be published online.

All countries but one (Mali) have notified their need for a transitional period before this information is published, and their national trade portal becomes fully operational, while only Togo has not notified its need for assistance to meet this commitment. All other countries are in category C⁴.

² The deadline for the implementation of some TFA provisions remains undetermined for this country

³ Except for Bilateral and Regional Agreements (Art. 12.12), which definitive implementation deadline was notified as on Dec. 22, 2025

⁴ For further reference, it is reminded that to date (Dec. 2019) Benin has not yet notified any category.

Yet, although Mali has committed to publish all information by 2017, it notified that it requires international assistance to make this publication available on the Internet.

If the full publication of this information online is still an ongoing process in all countries, major achievements have however been achieved over the last two years everywhere, where Trade Portals are often already operational, even if only partly, especially when it comes to the effectivity of the enquiry point, and to providing an easy access to forms.

Accessing the single window may however be challenging due to unreliable internet connections, software glitches, and the inability of single window staff to fix them quickly.

Article 6: Fees and charges

Article 6 of the TFA obligates transparency and notice on all fees; limiting any fees or charges (other than import and export duties and other than taxes within the purview of Article III of GATT 1994, i.e. to be paid for services) to the costs of services rendered; and that any penalties are imposed only on person(s) responsible for any breaches and explained in writing.

The progress reports have mentioned that a number of fees are obviously not required for services rendered, or are charged at rates above the costs:

- Overtime fees are due even during normal business hours. In one port, the “normal” business hours for trucks to access the premises are limited in the port area to 2.5 hours in the morning and 1.5 hours in the afternoon
- In one harbor, the scanning of trucks and containers is charged 200,000 FCFA (approximately USD 340).

Imposing services that are unnecessary is also an infringement of the provisions in Art. 6 of the TFA, one usual example being imposing the scanning of all containers of a single homogeneous shipment, what is inconsistent with another article of the TFA (Art. 7 on risk management by Customs).

Mali, Niger and Togo have notified this provision as already implemented. Nigeria has required a transitional period until the end of 2022, while the others have requested assistance.

It should be underlined that a prerequisite for charging fees and services at their approximate cost infers that these costs have been carefully and transparently assessed. One example for such assessment has been the costing of overtime Customs services in Cote d'Ivoire.

Another important provision of Article 6 relates to penalties. The TFA stipulates that when a penalty is imposed for a breach of customs laws, regulations, or procedural requirements, this

penalty is not excessive, and an explanation in writing is provided to the person(s) upon whom the penalty is imposed.

The progress reports mention several comments received where operators (freight forwarders, importers, truck drivers) are imposed “heavy fines”. One fine imposed in Lomé for trucks exceeding 48 hours at port, even when the truck owner and driver are not responsible for this overrun, is also clearly in breach of this Article (Art. 6.3.2) which states that “penalties (...) are imposed only on the person(s) responsible for the breach under its laws”.

Article 7: Release and Clearance of Goods

TFA Art. 7 requires members to adopt procedures for submitting import documentation, encouraging electronic documents and payment; procedures for the release of goods; nondiscriminatory risk management systems; and post-clearance audit, encouraging publication of release time information. It also requires members to provide special measures related to “authorized operators” who meet published criteria; processes for the prioritization and prompt release of perishable goods.

Sub-section 1.1. pertains to pre-arrival processing. Members are required to establish or maintain “*procedures allowing for the submission of import documentation and other required information, including manifests, in order to begin processing prior to the arrival of goods with a view to expediting the release of goods upon arrival*”.

Three countries (Nigeria, Senegal and Togo) have already committed to a full implementation of this sub-section, while Burkina Faso, Ghana, Mali and Niger have set indicative or definitive deadlines for transitional periods and requested international assistance. Cote d’Ivoire notified this provision as B category and committed to achieve the transitional period by January 1, 2021.

It may be assumed from the information available in the progress reports that even in those countries which have already notified their compliance, some documents and information may not always be submitted in advance, noticeably due to documents (especially manifests) which are not entirely paperless, and a limited access to the Internet on both ends (Customs and other public administrations, and importers, brokers and forwarding agents).

Sub-section 1.2. is about adopting or maintaining procedures allowing the option of electronic payment for duties, taxes, fees, and charges collected by customs incurred upon importation and exportation.

Even if single windows are already in place in the countries, it has been noted in the progress reports that banks are not fully involved in the system to enable electronic payments of taxes, tariffs and fees.

Except for Nigeria (deadline December 22, 2020) and Senegal (notified in category A), all other countries notified this provision as in category C, while most have not yet determined a definitive deadline for complying.

Sub-section 3.1. pertains to the separation of release from the determination of Customs duties and other charges. This sub-section requires that the procedures allow for the release of goods prior to the final determination of duties, taxes, fees and charges. However, it does not appear from the content of the progress reports that this procedure is already effectively and fully applied (if in place) in most places, despite its notification in category A by a majority of the countries (Burkina Faso, Mali, Niger, Nigeria, Senegal).

Sub-section 4.1. deals with the organization and operation of risk management for Customs control. The inspection of 100% of a shipment, giving the profile of the trader and historical data short shrift in risk management assessments, both mentioned as usual practice in the progress reports, is not consistent with this TFA requirement. Two countries only (Cote d'Ivoire and Senegal) have committed to implement this provision from their accession to the Agreement. However, risk management should be discriminated from random checks, and can lead to abuses from deceptive importers/exporters unless an effective system of accreditation of dependable operators is in place, a matter sub-section 7.7.1 deals with.

Sub-section 7.7.1. relates to providing additional trade facilitation measures related to import, export, or transit formalities and procedures, to authorized operators who meet specific criteria. Except for Mali and Nigeria, who have not requested international assistance in this regard, all other countries notified this sub-section in category C. Whatever international support that can be provided in this matter should be connected with TFA 7.7.5, which is about affording to other Members the possibility of negotiating mutual recognition of authorized operator schemes.

Article 8: Border Agency Cooperation

TFA Art. 8 requires internal cooperation between a member's border control authorities and agencies and encourages cooperation between member states to facilitate border crossings.

Sub-section 8.2, which stipulates requirements for the coordination of procedures at border crossings, is particularly relevant to transit through corridors. It deals with:

- (a) alignment of working days and hours
- (b) alignment of procedures and formalities
- (c) development and sharing of common facilities
- (d) joint controls
- (e) establishment of one stop border post control

The progress reports mention a recurrent lack of border agency cooperation, and noted that customs joint border posts, whenever existing, are not operational.

No country engaged in the six corridors have notified they could meet already the goals set forth under TFA Art. 8. Nigeria is the most advanced on this, and notified in category B to commit by 2024, while Mali (also notified in B) mentioned an indicative date for end of 2026. Cote d'Ivoire and Ghana endeavor to be ready, with international assistance, by end of 2025, while the other countries have not set a definitive deadline so far.

Article 10: Formalities connected to import, export and transit

The Art. 10 of the TFA mandates that members review and use least trade restrictive formalities and documentation requirements; and encourages acceptance of paper or electronic copies, use of international standards, and establishment of a single window. It prohibits pre-shipment inspection requirements and mandatory use of customs brokers. Further, it requires uniform procedures and documentation throughout a member's territory, processes for re-consigning or returning rejected goods, and temporary admission of goods intended for re-exportation without fees, allowing for inward and outward processing of such goods.

Two sub-sections of the Article are specifically relevant with regards to goods to transit through international corridors:

- I. Sub-section 5.1, which stipulates that the use of preshipment inspections in relation to tariff classification and customs valuation is not required

Burkina Faso, Cote d'Ivoire and Ghana are already bound by this provision, and Nigeria will be by end of 2020.

It was noted, in a previous World Bank report, that Cote d'Ivoire had nevertheless passed a government regulation (in the form of an "avis", # 027/MCAPPME/SEPMBPE, dated Feb. 13, 2018) which imposes preshipment inspections (without qualification for goods in transit). Although the entry into force of this requirement had been later postponed until February 2019, this program is

now applicable. In order to be consistent with the TFA, such regulations ought to be already repealed in those countries where Art. 5.1 is already in force, especially for goods in transit.

2. Sub-section 6.1 which prohibits mandatory use of customs brokers

Already in force in Burkina Faso and Senegal, this provision will be effective in Nigeria by end 2020, and by mid-2021 in Ghana. The other countries have notified their need to postpone its application by several years.

However, a regulation formally enabling importers and exporters to process their goods through Customs and other formalities without intermediaries may not be always sufficient for an effective application of this TFA clause. As an example, the report on Cotonou harbor states that “*illiterate or ICT-unsavvy importers are unaware of rules and deadlines, and therefore unable to take advantage of the control that SEGUB allows importers to wrest back from customs brokers*”.

Article 11: Freedom of transit

This article clarifies how members can regulate goods in transit through a territory to minimize charges or delays and encourages cooperation and coordination between members to enhance transit.

Based on the findings of the progress reports, particular attention should be paid to the following sub-sections⁵:

5. Members are encouraged to make available, where practicable, physically separate infrastructure (such as lanes, berths and similar) for traffic in transit.

Cote d’Ivoire and Mali have already notified their compliance with this provision. Additional information based on the findings during the field work could substantiate this point.

Ghana and Nigeria have committed to meet these stipulations, respectively in mid-2021 and 2029. The other countries have not yet notified definitive deadlines.

6. Formalities, documentation requirements, and customs controls in connection with traffic in transit shall not be more burdensome than necessary to identify the goods; and ensure fulfilment of transit requirements.

Cote d’Ivoire, Mali and Nigeria are already bound by this provision. However, some difficulties seem to remain in this regard, such as in the Abidjan harbor, where the report mentions that there is need to monitor trade facilitation policies to ensure continuity. The Ouagadougou Triangle report

⁵ Information on the other important sub-sections are available in the attached chart.

mentions that although the number of documents required was successfully reduced in the past, without monitoring this number has increased as new regulations with specific requirements are implemented.

7. Once goods have been put under a transit procedure and have been authorized to proceed from the point of origination in a Member's territory, they will not be subject to any customs charges nor unnecessary delays or restrictions until they conclude their transit at the point of destination within the Member's territory.

Like for sub-section 5, Cote d'Ivoire and Mali have notified this clause in category A. Nigeria is said to abide by end 2020, and Ghana by mid-2021.

Considering the content of the progress reports, one key issue in this regard is the abundance of checkpoints from point of entry (or departure) and point of arrival. Bribery at "unofficial checkpoints" and related delays along corridors make the ports less competitive. It is noted with satisfaction that the Togolese government, although not yet having set a definitive deadline for meeting the requirements of TFA 7.7, tries already to reduce corruption on the corridor Lomé-Ouagadougou by reducing the number of road checkpoints from 19 to 3, in Lomé, Sokodé and Cincassé.

11. Guarantees for traffic in transit shall be limited to ensuring that requirements arising from such traffic in transit are fulfilled and 12. Once the Member has determined that its transit requirements have been satisfied, the guarantee shall be discharged

The ECOWAS Convention Relating to Interstate Road Transit of Goods (A/P 4/5/1982) provides for a guarantee collected by the country of the point of entry of the goods, at the fixed rate of 0.5% of the value (CAF) of the imported goods. However, the progress reports have noted that the Interstate Road Transit Regime, perceived as too complex, is not really used as operators refuse to pay for the guarantee, mainly by fear of not getting reimbursed once goods have been delivered at their final destination.

Burkina Faso, Cote d'Ivoire, Mali and Nigeria have notified sub-section 11 as already applicable in their respective countries, as well as sub-section 12 (bar Nigeria, who will apply this provision by end 2021).

15. The use of customs convoys or customs escorts for traffic in transit may be required only in circumstances presenting high risks or when compliance with customs laws and regulations cannot be ensured through the use of guarantees.

Burkina Faso, Cote d'Ivoire and Mali have notified this clause as immediately applicable.

Nigeria is due to apply this clause by the end of 2020, and Ghana by mid-2021.

However, according to the findings, this requirement is far from being fully abided by. As an example, the Ouagadougou Triangle report mentions that for the Cote d'Ivoire hinterland "*currently all transit goods must have a GPS unit and be escorted*". One key problem is that GPS devices are not electronically sealed, permitting carriers to unload and smuggle goods before crossing the exit border.

Nevertheless, beyond the high cost of these escorts, the reports mention they cause delays at the points of entry as trucks are required to wait sometimes a day or more for an escort to be available.

Article 12: Customs cooperation

This article encourages countries sharing best practices in managing customs compliance and sets terms for exchanges of information requests and responses between members while protecting confidentiality.

Mali, Senegal and Togo have notified this article in category A (already applicable).

The exchange of information between Customs departments remains to be improved in the region, as noted in the progress reports. However, the adoption of a common Customs code in December 2017 by the Heads of States of the ECOWAS countries should provide avenues for progress in this matter.

[See Comparative Notification Breakdown chart annexed to this report]

V. Recommendations and Suggested Action Plan for Legal/Regulatory Reforms

The moves towards the integration of ECOWAS countries' economies, as well as the pledge of the nine countries surveyed to implement the obligations stipulated in the Trade Facilitation Agreement express a commitment to simplify and expedite the entry, transit and export of goods along the corridors. There are however several impediments and gaps to overcome for significant progress to be achieved.

This analysis has identified important disparities among the nine countries, as well as common inconsistencies with regards to compliance with regional and international treaties, and the WTO TFA.

The following recommendations are based on the general assessment that most of the problems that have been identified are due to five main grounds:

1. National legislation is not always consistent with international agreed treaties and standards. Even when the Constitution or other law stipulates that international laws supersede national legislation, Courts and public administrations tend to apply the legislation they are most used to.
2. Applicable legislation is often unclear, and allows excessive discretion to front desk government officials (Customs, sanitary and phytosanitary authorities, etc.)
3. Legislation is not easily available, even to government officials
4. Applicable legislation is often unknown by private actors at the forefront of the transport process, especially carriers and truck drivers, what entails they are unable to effectively challenge any decision from an authority, or seek the application of a legal right
5. The existing gaps that hamper in each country a swift flow of cargo on the corridors are worsened by the very different paces of the implementation of their international obligations by each country

Outcome 1: National legislation is aligned with agreed international treaties and conventions
The development of the National Trade Portals provides an excellent opportunity to review the applicable legislation and assess it against the regional and international treaties pertaining to the transport of goods along the corridors.

Such assessment is anyway needed to expedite the implementation of all provisions of the TFA by the deadlines notified by the countries.

All countries, either by Constitution, by law or by customary practice, weigh international legislation above their national laws and regulations. However, this provision is often overlooked.

Organizing trainings to disseminate this principle, while providing hands-on advice and best international practice on how to implement it effectively, can provide a temporary solution until the national legislation is in line with the international obligations of each country. This activity should primarily address ministerial officials, Courts judges, and tribunals.

It is also advisable to propagate, through handbooks, leaflets and seminars, the principal rules that should already be applied country wise in freight transport, that are stipulated in international treaties, conventions and agreements.

Outcome 2: Reduce ambiguities in legislation and ensure its uniform application

GATT Art. X requires legislation to be applied uniformly in each country, to secure predictability.

The progress reports concur with many other studies that describe the imprecise provisions of legislation as a source of difficulties, and even corruption.

Changing laws is usually tedious and time consuming and should be used for major improvements in this regard. Clarification in the way legislation ought to be applied can often be achieved through ministerial notes that are made public in the Official Gazette.

Their drafting should reflect both common, and best practice, and should set priorities as to which procedures and regulations need clarification – and simplification whenever possible – most urgently. This activity should be best conducted with the active participation of the private sector, through a series of workshops.

A FIRST TEST COULD BE TO AIM TO REDUCE THE PRACTICE OF ESCORTS AND CONVOYS ALONG THE CORRIDORS BY DEFINING COMMONLY AGREED RULES FOR THE SEAL OF GPS.

Outcome 3: increase knowledge and understanding of applicable legislation by public officers
Legislation is often complex, sometimes convoluted, and as in most countries front desk public officers lack a full understanding of their content and interactions.

Even though legislation pertaining to cargo transport and transit may be published on Trade Portals, the public officers are not all learned in the reading and understanding of legislation. The development, publication and circulation of handbooks explaining in plain language the applicable regulations and procedures is as much important as the development of unsurpassed quality legislation.

The organization of seminars, where the content of the handbooks is presented and the document disseminated, is also recommended.

Outcome 4: disseminating legislation among all interested private sector actors

This is basically mirroring the activities in Outcome 3 and addresses the private sector actors. The progress reports have mentioned that the carriers, and especially their drivers, as well as other actors, even importers and exporters, were not fully aware of the rules and procedures that are applicable to their situation.

The same brochures and leaflets may be used to organize briefings and short training seminars. The support and cooperation of professional organizations and syndicates would help in the organization of these activities. In addition to the explanation of applicable regulations and procedures, these seminars could also help review the efficiency and effectivity of procedures for the prompt review and correction of administrative action relating to Customs, import, export and transit.

Although not specifically dealing with the cargo transport through international corridors, seminars with representatives of the private sector could also discuss how to best use the right to comment and be consulted before the entry into force of new regulations (especially when they are meant to align with the TFA provisions notified in category C).

Outcome 5: Harmonizing the pace for a full implementation of the TFA

The stage of advancement in the full application of the TFA varies greatly between countries, depending on the Articles and even within articles, between sub-sections.

This discontinuity is detrimental to a coherent application of the provisions that matter most when it comes to international transit.

While some provisions may become applicable soon in one country and are meant to help speed up border procedures, this is of no impact unless the same applies in the neighboring country along the corridor. An eloquent example relates to the deadline for the alignment of working hours and days at border crossings. Ghana and Cote d'Ivoire (which have basically no transit from one country to the other) have committed to coordinate procedures and working hours by end of 2025. But Burkina Faso, whose goods transit to and from Tome and Abidjan, has so far only provided an indicative deadline for 2028.

Assisting countries in the implementation of the TFA, as well as in improving their national legislation, would be more efficient if assistance also focuses on the approximation of the deadlines among countries involved in the same corridor, provision by provision.

Conclusion

Abuses, bribes and “unofficial” practices lead to discrepancies in the application of national and international legislation with regards to road transport through West Africa corridors. They result in delays, unnecessary costs, and hamper economic growth.

However, this is only one side of the coin.

All possible improvements that may facilitate the transport of goods through the West African corridors don't necessitate a change in legislation, even if they need changes in procedures, practice and behaviors. Progresses may be already achieved if the applicable legislation is better known by all public and private actors, through training seminars, brochures or guiding manuals.

Still, the current mapping has identified a number of bottlenecks and hurdles to overcome, which need changes and harmonization in legislation, including international standards and conventions.

Fully implementing the provisions of international treaties and conventions, harmonizing national legislation against international standards is as well important to facilitate international transport.

The national agenda and commitments for a full implementation of the provisions of the WTO Trade Facilitation Agreement provides for each country a clear roadmap for those changes, by together detailing the goals to be achieved, and the timeline to conduct them.

To achieve these goals implies that the current legislation, both national and sub-regional (as well as the way it is implemented and enforced) is carefully reviewed in each country as well as at the regional levels of ECOWAS and WAEMU, to identify the gaps, loopholes, ambiguities and inconsistencies that still need to be addressed through legal reform to resolve the current difficulties. A lot has been done over the last decades, but more improvements and simplifications are obviously needed.

The establishment of the National Trade Portals, which is still an ongoing process in the majority of the West African countries, and which implies the gathering of all applicable trade legislation, provides an excellent opportunity to conduct these reviews.

Once identified, the requirements for clarification, harmonization and simplification of legislation will be best addressed if the legal reform is conducted in full consultation with the private sector.

Trade facilitation legal reform can only be successful if all actors, including the private sector, are effectively associated in the process of the making of new or revised legislation. Some other countries on the African continent have already considered that improving the way legislation is drafted a key element for improving the quality of their legislation, and for enlarging the understanding of its provisions by all. Manuals and guidelines have been developed, with some

international support, to explain government decision makers and legal drafters how to improve the process for reforming legislation, using tools such as gap analysis, public consultations and impact assessments.

This participatory process, involving the major private stakeholders in consultations when developing legislation, ensures public adherence, or at least acceptance of the new provisions. Moreover, it is a requirement, stipulated under Art. 2 of the TFA, which refers to the opportunity to comment draft legislation, and which recommends conducting consultations prior to the entry into force of any trade legislation.

But high-quality legislation may go unheeded unless it is made readily available to, on the one hand, the government officers in charge of its implementation at ground level (ports, borders, and check-points) and on the other hand to the actors of the transport chain: importers and exporters, carriers (including the truck drivers), freight forwarders and other brokers.

A 2018 World Bank mission in one West Africa State, designed to develop the National Trade Portal, had identified that despite the quality of the legislation in the country, most international business and trade actors, as well as senior government officials in the ministries and civil service, had only very limited access to the applicable legislation – if at all. It was even witnessed that an Appellate Court Judge sometimes needs to seek information from private law firms to gain access to the laws and regulations, which are published only in an Official Gazette which is not widespread throughout the country.

The World Bank, USAID and the European Union, together with other international donors, develop and implement assistance programs to help the West African countries establish and maintain their Trade Portal, in line with Art. 1 of the TFA, which inter alia stipulates how procedures, rates of duties and taxes, fees and charges, rules for classification, restrictions, prohibitions, laws and regulations must be published in a readily available manner.

It must be underlined that already, based on Art. X of the GATT (1947), basically no law, regulation, judicial decision or administrative ruling of general application pertaining to the classification or the valuation of products for customs purposes, or to rates of duty, taxes or other charges, or to requirements, restrictions or prohibitions on imports or exports, or on the transfer of payments thereof, may be enforced unless the measure has been officially published beforehand.

In addition to this GATT obligation, the Trade Facilitation Agreement now requires that this publication shall be made “easily accessible” and available on the Internet.

Together with the establishment and maintenance of enquiry points, the Trade Portals may provide an appropriate repository for the posting of this information.

However, legislation clauses are not intelligible to all, and making them “easily accessible” implies also that their key provisions and procedures are explained in plain words, through explanatory papers, briefing notes and training seminars, targeting those who must abide by the rules, and those who are in charge of their implementation.

Annex: TFA Provisions - Compared Notification Breakdown by Country

Implementation Date of TFA Key Provisions Pertaining to West Africa Trade Corridors

Compared Notification Breakdown

[annex Chart here]

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