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## *Abstract*

An increasingly popular but disturbing method of misappropriating government revenue in Nigeria is the practice of granting all manner of indiscriminate waivers of tariffs and duties on imported commodities under the directive of the Presidency. This paper critiques the law, use and abuse of duty waivers in Nigeria. It argues that although the President, on the advice of the Tariff Council, has powers to grant waivers, such powers are neither supposed to be granted indiscriminately nor in secret. The granting of indiscriminate waivers to individual operators in an industry rather than to the entire industry distorts national economic and industrial development which is normally the very essence of granting such waivers. The paper also raises questions about the implications of the granting of indiscriminate duty waivers by the Presidency for fiscal relationships in a federal state.

## Introduction

An increasingly popular but disturbing method of misappropriating government revenue in Nigeria is the practice of granting all manner of indiscriminate waivers of tariffs and duties on imported commodities under the directive of the Presidency.<sup>1</sup> This type of “hidden expenditures”<sup>2</sup> began to gain notoriety under the civilian administration of President Olusegun Obasanjo (1999-2007). It has for instance been asserted that in “the run-up to the 2007 elections, verifiable reports by the House of Representatives Committee on Customs and Excise indicate that Nigeria lost over N380 billion in import duties which were waived by the Federal Government to its crony importers.”<sup>3</sup> It

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<sup>1</sup> See *Vanguard*, ‘Import Duty: Retrieving Waivers from Wasteful Hands’, (February 22, 2012) <http://www.vanguardngr.com/2012/02/import-duty-retrieving-waivers-from-wasteful-hands/>> (December 9, 2012). See also *Vanguard*, ‘Tambuwal to FG: Stop Arbitrary Tax Waivers’, (September 27, 2011), <http://www.vanguardngr.com/2011/09/tambuwal-to-fg-stop-arbitrary-tax-waivers/>> (December 10, 2012).

<sup>2</sup> See Uwazi at Twaweza, ‘Tanzania’s tax exemptions’ (2010), Policy brief TZ.12/2010E <http://twaweza.org/uploads/files/Tax%20Exemptions.PDF>> (January 28, 2013)

<sup>3</sup> See *Punch*, ‘The Abuse of Import Duty Waivers’, (December 12, 2011), <<http://odili.net/news/source/2011/dec/12/803.html>> (December 9, 2012)

has further been suggested that, at least in part, such “abuse of fiscal resources by the Federal Government has been used for the purpose of financing elections.” The usual mechanism for operationalising this is to grant “favours to the ruling party and candidate financiers (godfathers) who in turn donate generously to party and candidate expenditure.”<sup>4</sup> This is simply an extension of the corrupt practices in Nigeria which has been facilitated by the country’s oil rents.<sup>5</sup> As has rightly been noted, “oil and corruption go together” in the country.<sup>6</sup> Not surprisingly, the abuse of custom duty waivers has persisted despite the fact that the Obasanjo administration and all subsequent governments have publicly announced the stoppage of the granting of such indiscriminate waivers. The Government of Umaru Yar’Adua, which succeeded Olusegun Obasanjo, for instance, immediately moved to check this problem. In September 2007, Yar’Adua’s Finance Minister, Shamsuddeen Usman inaugurated a panel headed by Senator Udoma Udo Udoma to review import duty waivers and tax exemptions granted by the administration of former President Olusegun Obasanjo. During this inauguration, Shamsuddeen Usman made it explicit that the practice of granting duty waivers and tax exemptions had been suspended.<sup>7</sup> At the time, this policy was generally acclaimed by most economic observers including the World Bank.<sup>8</sup> Although this panel was given 8 weeks to submit its report, no such report has been published by the Federal Government till date. This might be explained by the fact that the suspension of duty waivers did not last because, as would be seen later, the Yar’Adua Government soon went ahead to extend some of the waivers granted by the Obasanjo regime. President Jonathan, who took over the reigns of power after the

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<sup>4</sup> Ibid.

<sup>5</sup> See S O Osoba, ‘Corruption in Nigeria: historical perspectives’, *Review of African Political Economy* 23 (1996), pp. 371-386, and Carlos Leite and Jens Weidmann, ‘Does mother nature corrupt? Natural resource, corruption and economic growth’, IMF Working Paper Number 99/ 85

<sup>6</sup> Quoted in Alberto Ades and Rafael Di Tella, ‘Rents, competition and corruption’, *The American Economic Review* 89 (1999), p. 982.

<sup>7</sup> *Tax Justice Africa*, ‘Nigeria: Yar’Adua Suspends Waivers Tax Exemptions’, (August 24, 2007), <<http://taxjusticeafrica.blogspot.com/2007/08/nigeria-yaradua-suspends-waivers-tax.html>> (December 9, 2012).

<sup>8</sup> See *NICON Investment Digest*, ‘Yar’Adua receives a nod from the World Bank’, September 10, 2007, 2007, <<http://www.niconinsurance.com.ng/PagesG/NICON%20INVESTMENT%20DIGEST%20ISSUE%209.pdf>> (December 10, 2012).

demise of President YarAdua in 2009, also continued this illegal practice According to Mr. Garuba Makarfi, the Deputy Comptroller- General of Customs (Human Resources), in 2011 alone, the Federal Government lost N37.2bn to import duty waivers granted importers of raw materials alone. This was equivalent to 7 percent of the total Customs collection for the year.<sup>9</sup>

Arguably because of the widespread public outcry against such brazen abuses of the Nigerian fiscal laws, the current Minister of Finance and Coordinating Minister for the Economy, Ngozi Okonjo-Iweala announced on September 22, 2011 that the President has lost his right to grant such waivers and that all “those who usually go to see the President at night will no longer be allowed to do so. If they have any proposal, it must be presented to the Economic Team”.<sup>10</sup>

The essence of this paper is to critique the law, use and abuse of duty waivers in Nigeria. This paper argues that although the President, on the advice of the Tariff Council, has powers to grant waivers, such powers are neither supposed to be granted indiscriminately nor in secret. The granting of indiscriminate waivers to individual operators in an industry rather than to the entire industry distorts national economic and industrial development which is normally the very essence of granting such waivers. Furthermore, the granting of waivers before or without causing such to be publicly disclosed through publication in a Government Gazette is illegal. At the very least, public disclosure can serve as a check against fiscal recklessness. Finally the paper raises questions about the implications of the granting of indiscriminate duty waivers by the Presidency for fiscal relationships in a federal state. In order to achieve its objective, the paper is divided into four parts. Part One explores the evolution of fiscal relationships, the general principles behind the practice of duty waivers and the laws that regulate such practices in Nigeria. Part Two critiques the practice of duty waivers in

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<sup>9</sup> *Punch*, ‘FG lost N37.2bn to import waivers in 2011 – Customs’ (February 3, 2012), <http://www.punchng.com/business/business-economy/fg-lost-n37-2bn-to-import-waivers-in-2011-customs/>> (December 8, 2012)

<sup>10</sup> *Vanguard*, ‘Banks to be fully capitalized by September End- CBN’, (September 23, 2011) <http://www.vanguardngr.com/2011/09/banks-to-be-fully-capitalised-by-sept-end-cbn/> (December 10, 2012).

Nigeria under the Obasanjo Administration while Part Three explores such practices under the subsequent administration of Shehu Yar'Adua and the current administration of President Goodluck Jonathan. Finally, Part Four concludes the paper.

## The principles of customs duty waivers in Nigeria

The charging and waiving of customs duty is an integral part of the tax system in any country which governments routinely use in the attempt to influence economic and industrial development with the aim of furthering its national objectives.<sup>11</sup> In several developing countries, for instance, governments provide tax incentives, which include duty waivers, to encourage capital formation in selected industries.<sup>12</sup> In order to help achieve the above objective, such incentives must meet the characteristics of a good tax system which include fairness, transparency and even handed application.<sup>13</sup>

Investors for instance, will naturally have more confidence in tax incentive systems that have the above characteristics than in systems where there is little or no transparency

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<sup>11</sup> Amaresh Bagch, 'Efficacy of Tax Incentives: 'Tax Expenditure Analysis' and Its Relevance for India', *Economic and Political Weekly*, 9, 24 (1974), p. 951. See also Richard Bilsborrow and Richard Porter, 'The Effects of Tax Exemption on Investment by Industrial Firms in Colombia,' *Weltwirtschaftliches Archiv*, Bd. 108 (1972), pp. 396-426, p. 396; Quan Li, 'Democracy, Autocracy, and Tax Incentives to Foreign Direct Investors: A Cross-National Analysis,' *The Journal of Politics* 68 1 (2006), p. 62; Pawan Sikka, 'Financing the development and commercialization of indigenous technology in India,' *Current Science* 73 (5) (1997), p. 406; Stephen Clark, Tax Incentives for Foreign Direct Investment: Empirical Evidence on Effects and Alternative Policy Options, *Canadian Tax Journal* 48 (2000), pp.1140; United Nations Conference on Trade and Development, Tax Incentives and Foreign Direct Investment: A Global Survey, *ASIT Advisory Studies* No. 16 (2000), p. 11; Milan Sedmihradsky and Stanislav Klazar (2002), 'Tax competition for FDI in Central European Countries' Center for Economic Studies & Ifo Institute for Economic Research Munich (Germany) Working Paper No. 647 (1), p. 1; William Ingram and Scott Pearson 'The Impact of Investment Concessions on the Profitability of Selected Firms in Ghana', *Economic Development and Cultural Change* 29 (1981), p. 831.

<sup>12</sup> Robin Boadway, Frank Flatters and Jean-François Wen 'Are Tax Incentives Biased against Small Firms in Thailand?', *The Journal of Developing Areas* 31 1 (1996), p. 75. See also Jack M. Mintz, 'Corporate Tax Holidays and Investment', *The World Bank Economic Review*, 4 1 (1990), pp. 81-102, p. 81.

<sup>13</sup> Duanjie Chen, 'Reforming the taxation incentive program in Jordan: Analysis and Recommendations', University of Toronto International Tax Program Paper Number 0412 (2004), p.5. See also European Commission- Directorate General, Taxation and Customs Union (2004), Common Consolidated Corporate Tax Base Working Group General Tax Principles, Working Document for Meeting to be held on Tuesday, 32 November in Brussels (p. 5).

and no guarantee of even handedness in the award and adjudication of tax incentives.<sup>14</sup> This is because policy inconsistencies distort markets.<sup>15</sup> Efficient tax systems therefore determine rules upfront and ensure uniform application of tax incentives aimed at aiding specified sectors of the economy. This explains why the usual legal mechanism for establishing tax incentives like waivers is through legislation and public pronouncements. In Nigeria, for instance, two main laws govern the charging and waiving of customs duty on imported products. These are the Customs and Excise Management Act Number 5 of 1958 (CAP 84 of 1990) and the Customs, Excise Tariff etc Consolidation Act Number 4 of 1995. The Customs and Excise Management Act of 1958, for instance, charges the Customs, Immigration and Prisons Services Board with the responsibility of controlling and managing the administration of the customs and excise laws and collecting the revenues from customs and excise duties and accounting for such revenues.<sup>16</sup> The law further enshrines the concept of fairness by removing subjectivity and arbitrariness in the administration of customs and excise duty. In this direction, the supervising ministry of the above Board is specifically prevented from giving the Board “any direction, order or instruction in respect of any particular person which would have the effect of requiring the Board to increase or decrease any assessment of duty made or to be made or any relief given or to be given or to defer the collection of any duty or judgment debt due”.<sup>17</sup>

The second Act that governs the charging and waiving of customs duty in Nigeria is the Customs, Excise Tariff etc Consolidation Act Number 4 of 1995. Schedule 1 of the said Act lists the duties chargeable on all imported goods while Schedule 2 lists the goods exempted from customs duty in Nigeria. Changes to the above listings are done through amendments to the act or through the yearly appropriations act. With respect to the later,

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<sup>14</sup> See Robert Rolfe, David Ricks, Martha Pointer, Mark McCarthy, ‘Determinants of FDI Incentive Preferences of MNEs’, *Journal of International Business Studies* 24 (2) (1993), pp. 335-355 and Quan Li, ‘Democracy, Autocracy, and Tax Incentives to Foreign Direct Investors: A Cross-National Analysis’, *The Journal of Politics* 68, (2006), pp. 62-74

<sup>15</sup> Anthony Mwanaumo, T.S Jayne, Ballard Zulu, Julius Shawa, Green Mbozi, Steven Haggblade and Misheck Nyembe, *Zambia’s 2005 Maize Import and Marketing Experiences: Lessons and Implications* (2005), <<http://www.aec.msu.edu/fs2/zambia/PS11.pdf>> (December 12, 2012).

<sup>16</sup> Section 3.

<sup>17</sup> Section 5.

it is for instance legitimate for the government to specify in its yearly budgets, which usually metamorphose into appropriations acts, amendments to the customs duty schedules with the main objective of promoting the development and growth of specified industries. With respect to the former, Government also has powers to regularly amend both the schedules relating to goods that have their duties waived and those that are charged import duties. Given the economic consequences of granting and waiving import duties for various economic actors, it is not surprising that the process of granting waivers naturally come under immense pressure and lobby from economic and political operators. Although it is difficult to rule out the possibility that such waiver awards system can be abused, the fact remains that public disclosure of the outcome can act as a check against indiscriminate award of duty waivers to individuals or companies rather than industries.<sup>18</sup> Admittedly, even when Nigeria observed the above transparent system, at least in some aspects of the award of duty waivers, abuses were still recorded. These especially related to cases where duty waivers were exploited by recipients and extended to other uses. In his 1990 budget breakdown speech, for instance, the then Minister of Budget and Planning, Alhaji Abubakar Alhaji asserted thus:

Government has observed with concern that the exemption from import duty provided under Schedule II of the Customs and Excise Decree No. 1 of 1988 has been subjected to abuse by some importers. Government has accordingly decided to remove the following items from the Schedule of exemption from import duty: (i) Technical Assistance Importation, (ii) Importation by Voluntary and Religious Organizations, (iii) Food stuffs ordinarily consumed by Africans and produced in a territory adjoining to Nigeria, (iv) Drugs and Medications.... State Government Agencies have continued to include Customs Duty Exemption clauses in the contracts with private companies despite Government decision to the contrary since 1988. This practice has led to considerable loss of revenue to the Government. It has accordingly been decided that Government contracts shall no longer be entitled to exemption from import duty.<sup>19</sup>

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<sup>18</sup> The Robert Klitgaard equation states that corruption equals monopoly plus discretion minus accountability. Since public disclosure approximates to accountability, increased disclosure will have the effect of reducing the level of corruption in any society. Quoted in Susan Rose-Ackerman, 'the political economy of corruption' in Kimberley Elliott (ed), *Corruption and the Global Economy* (Washington DC, Institute of International Economics, 1997), p. 38.

<sup>19</sup> See Budget Breakdown Speech by Minister of Budget and Planning, Alhaji Abubakar Alhaji, reproduced in *Business Times*, January 8, 1990, p. 14.



The legal basis for the granting of duty waivers in Nigeria outside the provisions of Schedules 1 and 2 of the Customs, Excise Tariff etc Consolidation Act Number 4 of 1995 is enshrined in Section 11 of the said Act. This specifically states that the President may, on the recommendation of the Tariff Review Board, by order (a) impose, vary or remove any duty or levy; (b) add to or vary any of the schedules; (c) delete the whole or any part of any of the schedules; (d) substitute a new schedule or schedules thereto. In order to ensure transparency in the exercise of the above powers, section 11 (3) go on to state thus: “An order made under sub section (1) of this section shall have effect from the date of its publication in a Gazette.” Based on the above, it is clear that under the laws of the Federal Republic of Nigeria, no official or organization has been granted the power to award duty waivers to businesses or individuals arbitrarily and/ or without making such waivers public knowledge. The above structure is particularly useful in an oil rent economy like Nigeria where corruption reign so as not to “create significant possibilities for suspicious behaviors from tax administrations and companies”<sup>20</sup>

Aside from the promotion of industrial development, taxation could also play an important role by raising finance for governments.<sup>21</sup> In Colonial Nigeria, this function was indeed more pronounced. In fact, the generation of revenue for funding the activities of the state played a central role in the amalgamation of Northern and Southern Nigeria in 1914. Specifically, the main reason for the 1914 amalgamation was to reduce the dependence of Northern Nigeria on British taxpayers by using the surpluses from Southern Nigeria to subsidize its administration.<sup>22</sup> While this may have

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<sup>20</sup> Jacques Morisset and Neda Pirnia, ‘How tax policy and incentives affect foreign Direct Investment: A Review’ (2000), World Bank Policy Research Working Paper Number 2509, p.3.

<sup>21</sup> See Howell Zee, Janet Stoksky, and Eduardo Ley, Tax Incentives for Business Investments: A Primer for Policy Makers in Developing Countries, *World Development* 30 (2002), p. 1497; George E. Lent, ‘Tax Incentives for Investment in Developing Countries, Staff Papers - International Monetary Fund 14 (1967), p. 249 and Agnès Bénassy-Quéré, Lionel Fontagné and Amina Lahrière-Révil Tax Competition and Foreign Direct Investment, CEPII, Working Paper No 2003 – 17, p. 8.

<sup>22</sup> See, for instance, Report of the Commission on Revenue Allocation (Lagos, 1951, ‘Hicks–Phillipson Report’), p. 68; O. Osadolor, ‘The development of the federal idea and the federal framework’, in K. Amuwo, A. Agbaje, R. Suberu and G. Herault (eds.), *Federalism and Political Restructuring in Nigeria* (Ibadan, 1998), p. 35; R. Nwokedi, *Revenue Allocation and Resource Control in Nigerian Federation* (Enugu, 2001), p. 20; and Federal Republic of Nigeria, *Report of the Political Bureau* (Lagos, 1987), p. 169.

made administrative sense, it laid the foundations of the distrust in all aspects of nation building in Nigeria. Central to this distrust is the revenue allocation arrangement between the various sections of the country.<sup>23</sup> Under the colonial rule, such tensions did not become immediately apparent. All these however changed with the movement towards political independence.

Despite the objective of the amalgamation, it was not until 1946 that the Richards Constitution for the first time established an all Nigeria legislative council. Although its role was purely advisory, it raised the contentious question of revenue sharing between the federal and regional governments. This led the colonial authorities to appoint Sir Sydney Phillipson, the then Financial Secretary of the Nigerian Colony, to investigate the problems of the distribution of financial and administrative powers between the various tiers of government.<sup>24</sup> In his Report, Phillipson was of the opinion that the devolution of powers from the center to the regions was desirable. Based on the above, his report recommended the gradual evolution to a revenue sharing system based mainly on the derivation principle.<sup>25</sup> The preference of Phillipson for the derivation principle was based on his belief that there was need to inculcate in each region, a sense of “financial responsibility” so that they will all learn to “cut their coat according to their cloth.”<sup>26</sup>

In 1951, the country adopted the Macpherson Constitution and in 1953, the Littleton Constitution replaced the Macpherson Constitution culminating in the appointment of the Sir Louis Chick Commission of Inquiry into revenue sharing in Nigeria. The 1953 Chick Commission Report also strongly favoured derivation as the basis for revenue

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<sup>23</sup> See, for instance, M. Hiskett, ‘Lugard and the amalgamation of Nigeria: a documentary record [book review]’, *African Affairs*, 70 (1971).

<sup>24</sup> A. Phillips (1971), Nigeria’s Federal Financial Experience, *The Journal of Modern African Studies*, Volume 9, Number 3, p. 393

<sup>25</sup> A. Adebayo (1993), *Embattled Federalism: History of Revenue Allocation in Nigeria, 1946-1990* (New York, Peter Lang Publishers), p. 35.

<sup>26</sup> Quoted in C. Uche and O. Uche (2004), Oil and the Politics of Revenue Allocation in Nigeria, African Studies Centre, Leiden, Working Paper Number 54/2004, p. 11.

allocation. In summary, the Report recommended that: the federal government should keep 50% of the general import duty while 50% should go to the regions on derivation basis; the federal government should keep 50% of the import and excise duty on tobacco, the rest going to the regions based on derivation; 100% of the import duty on motor spirit should go to the regions; 100% of the mining rent and royalty should go to the regions, and; both levels should share the export duty on hides and skins on a 50-50 basis.<sup>27</sup>

The above was the revenue allocation arrangement that was in place in Nigeria when the Colonial Government, in November 1955, set up a Committee to advise on the stimulation of industrial development by affording relief from import duties and protection to Nigerian industry. In the light of the fact that any such import duty relief was unlikely to uniformly impact on both the finances and development of the various regions, the granting of duty waivers instantly became a contentious and divisive issue in Nigeria. The Committee therefore took great care to reconcile the cost allocation for operationalising the scheme with its benefit allocation amongst the constituent governments of the Nigeria federation. Along these lines, the Report asserted thus:

Normally relief should be afforded by the payment to the undertaking of a sum equivalent to the whole or the part (as the case may be) of the duties paid on imported materials which the Department of Customs and Excise is satisfied has been used in local manufacture. The recommendation will involve the Federal Government bearing the whole cost of providing relief even though it will only have retained 49½ percent of the duty paid by the industry in the first place.... [i]n the long run the revenue of the Federal Government will stand to gain directly from the development of industry through the increase in the yield of Company Tax. The whole of the sums collected in Company Tax are under the present Constitution retained by the Federal Government and it is this allocation of revenue (together with the fact that the Federal Government will have received as revenue half the sum involved) which makes it possible for the Federal Government to contemplate bearing unilaterally the cost of refunding to industry sums collected on behalf of all the Governments of the Federation.<sup>28</sup>

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<sup>27</sup> Government of Nigeria (1953), *Report of Fiscal Commissioner on Financial Effects of Proposed New Constitutional Arrangements Revenue* (Lagos, Government Printer [Chick Report]), pp. 25-7.

<sup>28</sup> Federation of Nigeria (1956), *Statement of Policy Proposed by the Federal Government on the Report by a Committee appointed to advise on the stimulation of Industrial Development by Affording Relief from Import Duties and Protection to Nigerian Industry* (Lagos, Federal Government Printer, pp. 3-4.

From the above, it is clear that a derivation based revenue allocation system provides an intrinsic mechanism to check abuses of the fiscal system in a federal state. This is so because there is an incentive for the constituent governments to ensure that all fiscal policies including customs duty waivers that negatively impact on their revenue must have at least an equivalent positive impact to the general economic wellbeing of the specific region. The abuse of duty waivers under such economic environment was therefore far fetched. The discovery of oil in Nigerian in 1956 however fundamentally altered the arguments with respect to revenue allocation in the country.

In 1958, as a fall out of the 1957/58 Constitutional Conference, the Federal Government appointed Sir Jeremy Raisman and Professor Ronald Tress to review the federal fiscal structure. They recommended the de-emphasis on derivation as the basis for revenue sharing. The reason for the above was the potential impact of the newly discovered oil revenues on national development.<sup>29</sup> The Raisman Report, which also introduced the Distributable Pools Account (DPA), therefore significantly reduced the use of derivation as a principle for revenue allocation in Nigeria.<sup>30</sup>

The discovery of oil was no doubt the beginning of the emergence of Nigeria as a rentier state. Over time, the concept of derivation increasingly lost ground in the allocation of revenues in Nigeria. With subsequent increases in the revenues from oil rents, the focus of the constituent units of the Nigerian federation gradually shifted from revenue generation to revenue allocation. The consequence of the above is that the derivation basis of revenue allocation consistently depreciated reaching an all time low of only 2 percent in 1984 and then rising to the current rate of 13 percent in 1999.<sup>31</sup> Not surprisingly, the struggle for the control of oil rents in Nigeria played an important part

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<sup>29</sup> Colonial Office, Nigeria (1958), *Report of the Fiscal Commission* (London, Her Majesty's Stationary Office [Raisman Report]), p. 24.

<sup>30</sup> 'Raisman Report', pp. 31-2.

<sup>31</sup> Uche and Uche, 'Oil and Politics of Revenue Allocation', pp. 30-31.

in the current level of insecurity and corruption in the Nigerian State.<sup>32</sup> The current arrangement gives little encouragement to states to strive to be economically productive. The willingness and ability of states to question the abuse of fiscal rules for personal or sectional interests have been greatly diminished. Although Nigeria is supposed to be a Federal State, this is only but in name. The resources of the country that are supposed to be shared among the various tiers of government are regularly abused with little consequence.<sup>33</sup> Such abuse of fiscal rules for personal or sectional interest date back to the post Independence government of Abubakar Tafawa Balewa. The first Prime Minister of Independent Singapore, Lee Kuan Yew documented his meeting with the then Nigeria's Finance Minister, Festus Okotie Eboh in January 1966 when he attended the Commonwealth Prime Ministers Conference in Lagos thus:

Raja [Foreign Minister of Singapore] and I were seated opposite a hefty Nigerian, Chief Festus, their finance minister. The conversation is still fresh in my mind. He was going to retire soon, he said. He had done enough for his country and now had to look after his business, a shoe factory. As finance minister, he had imposed a tax on imported shoes so that Nigeria could make shoes. Raja and I were incredulous.... I went to bed that night convinced that they were a different people playing to a different set of rules.<sup>34</sup>

Under the Obasanjo civilian regime the granting of indiscriminate and illegal duty waivers simply became an additional tool for perpetrating such abuses. Aside from the illegality of granting such indiscriminate waivers in Nigeria, the concept also raises serious constitutional issues. This is especially so given the fact that Nigeria is a federation consisting of three tiers of Government: the Federal, the State and the Local Government. Section 162 of the Nigerian Constitution makes it explicit that the

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<sup>32</sup> See S. Khan, *Nigeria: the Political Economy of Oil* (Oxford, 1994), pp. 8-9. See also S. Decker, Corporate Legitimacy and Advertising: British Companies and the Rhetoric of Development in West Africa, 1950-1970, *Business History Review* 81 (2007), p. 76.

<sup>33</sup> Other methods of such abuses include: inflation of contracts, oil bunkering, indiscriminate award of oil blocs and brazen stealing through security votes. See, for instance, Obiamaka Egbo, Ifeoma Nwakoby, Josaphat Onwumere and Chibuike Uche, 'Security Votes in Nigeria: Disguising Stealing from the Public Purse', *African Affairs* 111/ 445 (2012), pp. 597-614.

<sup>34</sup> Lee Kuan Yew, *From Third World to First: The Singapore Story: 1965-2000* (Harper Publishers, 2000). p. 393.

“Federation shall maintain a special account to be called “the Federation Account” into which shall be paid all revenues collected by the Government of the Federation, except the proceeds from the personal income tax of the personnel of the armed forces of the Federation, the Nigeria Police Force, the Ministry or department of government charged with responsibility for Foreign Affairs and the residents of the Federal Capital Territory, Abuja.” The Constitution further provides that any “amount standing to the credit of the Federation Account shall be distributed among the Federal and State Governments and the Local Government Councils in each State on such terms and in such manner as may be prescribed by the National Assembly.” In the context of the above therefore, it is fair to argue that non-statutory waivers which are executed at the whims of the Presidency which in some cases favour only narrow interest groups distorts the principle of equity in revenue allocation. Such waivers always reduce the revenue that go into the Federation Account and thus the share of the Federation account that go to the States and the Local Governments.<sup>35</sup>

Another consequence of the Nigerian oil boom was that income from import duties remained an insignificant part of government revenue for a very long time. As would be seen later, it was only when economic difficulties set in that the revenue generation potentials of import duties came to the fore. With import duty income at insignificant levels, there was little incentive or need for economic and political interests to push for the waiver of such duties. Based on the above, it is not surprising that there is no evidence that the Gowon administration (1967-1975) engaged in indiscriminate granting of import duty waivers. General Murtala Muhammed, which replaced Gowon as Head of State was assassinated after only six months in office. The Nigerian economy however substantially weakened during the regime of Muhammed’s successor, General Olusegun Obasanjo. In his 1978/ 1979 budget speech for instance, Obasanjo stated that:

To be able to finance our recurrent and capital commitments... it has been necessary to introduce and revamp a number of fiscal measures. In this connection, there has been a general upward revision in import and excise duties as a means of raising additional revenue, protecting domestic industries and discouraging the importation and consumption of non essential foreign manufactures.<sup>36</sup>

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<sup>35</sup> See *Punch*, ‘The Abuse of Import Duty Waivers’.

Despite the above increases, there is no evidence that the Obasanjo (military) administration engaged in widespread granting and abuse of indiscriminate duty waivers. The same can be said of the subsequent civilian government of Shehu Shagari and the military government of General Muhammadu Buhari.

On August 1985, General Babangida came to power through a military coup. It is widely believed that his Government (1985-1993) ‘marked a transformation in Nigeria’s already notorious corruption, turning it into a generalized instrument of government.’<sup>37</sup> The fiscal recklessness of the government was not in doubt. An official Government panel headed by the Late Pius Okigbo, which was set up to investigate the activities of the Central Bank of Nigeria in 1994 reported that during his regime, \$12.2 billion was diverted.<sup>38</sup> The existence of huge excess crude oil revenue money may explain why the Government had no need to exploit the fraudulent enrichment potentials in manipulating import duty waivers. Rather, the administration made explicit its intention to resist such abuses. In 1990, for instance, Babangida’s Minister of Finance stated in a press conference on the 1991 budget that “many tariff complaints made for the particularist interests of the affected organizations were not entertained because of their negative economy wide effects”.<sup>39</sup>

Although the Government later amended some of the duties based on complaints, such amendments were properly done through legislation and thus were publicly disclosed. In 1992, for instance, the Babangida Government, as a consequence of the harsh economic consequences of the Structural Adjustment Programme, promulgated the

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<sup>36</sup> See 1978/ 79 Budget Speech by the Head of State General Olusegun Obasanjo, Reproduced in the *Punch*, April 33, 1978, p. 13.

<sup>37</sup> Stephen Ellis, ‘West Africa’s international drug trade’, *African Affairs* 108, 431 (2009), pp. 171–96, p. 179. See also Antonia Oko-osi, ‘Corruption and corrupt practices: institutionalization and legitimization under the Babangida administration’, *Malthouse Monograph on Africa Series Number 7* (2007).

<sup>38</sup> Philip Ujomu, ‘The economy, resource management and the maintenance of national security in Nigeria: a critique of the Shagari, Babangida and Abacha regimes’, *Nigerian Journal of Economic History* 3 (2000), pp. 84–96, p. 91.

<sup>39</sup> See Press Briefing by the Minister of Budget and Planning Dr. Chu S P Okongwu, on the 1991 Budget and National Rolling Plan (1991-1993) on January 2, 1991.

Customs, Excise Tariff etc (Miscellaneous Provisions) Decree Number 13 of 1992 and Customs, Excise Tariff etc (Miscellaneous Provisions) (No. 2) Decree Number 25 of 1992. These reduced import duty tariffs on several goods including CKD Components, spare parts for commercial vehicles, cement, among others. From the above, it is clear that even under Babangida, the established rule of public disclosure, through law or gazette, in the granting of custom duty waivers was obeyed. As already argued, this was no doubt a check against any indiscriminate granting of such waivers to specific individuals or business interests. After Babangida was forced to step aside, the short lived Transition Government of Ernest Shonekan also did not grant any indiscriminate import duty waivers. All it did was to extend the lifespan of the waivers granted by the Babangida Government which were aimed at ameliorating the consequences of SAP to the end of 1993. This was “in realization of the fact that the lead time between the time at which concessions were granted and the time at which the consumers began to benefit is fairly long.”<sup>40</sup> There is also no evidence that the subsequent Government of General Sani Abacha indulged in the indiscriminate granting and abuse of import duty waivers. This was so despite the fact that General Abacha was generally perceived as a corrupt and brutal leader who had little patience for opposition.<sup>41</sup> A landmark of the Abacha regime was the jailing of General Obasanjo for alleged complicity in a plot to overthrow the government. After the sudden death of General Abacha in 1998, his Chief of Defence Staff, General Abubakar was sworn in as Head of State. He immediately announced a short transition to civil rule and released several political prisoners including General Obasanjo. During his short reign, there is also no evidence that his administration engaged in indiscriminate granting of customs duty waivers. It was not until the civilian administration of Olusegun Obasanjo that widespread abuse in the granting of import duty waivers without following due process became public knowledge.

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<sup>40</sup> 1993 Budget of Transition by Chief E A O Shonekan, CBE Head of Government and Chairman of Transitional Council to the Joint Session of the National Assembly (Federal Republic of Nigeria, Undated) pp. 24-25.

<sup>41</sup> See Hoda Soliman, ‘Nigeria’s transition program: the endless course to civilian government and democracy’, *New England International and Comparative Law Annual* 4 (1998), pp. 253–62.



## Obasanjo and the abuse of duty waivers in Nigeria

On May 29 1999, General Obasanjo, after winning the 1999 presidential elections, was sworn in as President of the Federal Republic of Nigeria. Initially, the Obasanjo government respected the laws guiding the administration of customs duty and its waivers in the country. In its 2000 budget speech to the National Assembly, for instance, President Obasanjo made explicit the intention of his administration to adhere to the laid down process of granting import duty waivers through statutes:

Since the inception of this administration, approvals for import duty waivers have been strictly based on existing statutes. There is, however, the need to review some statutes that have given too many incentives to certain sectors thereby bringing such incentives in line with the economic realities of the country. Towards this end, it is intended that in the year 2000, an Inter-Ministerial Committee will be set up to review and make recommendations to government which will be submitted as a bill to the National Assembly.<sup>42</sup>

Shortly after this speech, the administration changed its mind. Although it is unclear when this began, what is obvious is that indiscriminate approvals of such duty waivers by various government functionaries culminated in a directive from the Department of Customs and Excise to try and curb such abuses. This was done through a directive issued in Circular No.12 of 2000 dated October 5, 2000, reference number NCS/DCG/CUS/018/S.4/vol.8 and sent to all zonal coordinators and customs area controllers, customs officers. Specifically, the above officers were directed to ignore requests and grants for import duty waivers unless approved personally by the President. Rather than follow the legal process for granting such waivers, the Obasanjo administration decided to illegally appropriate such powers to the President. It was under the cover of the above illegal directive that former President Obasanjo personally granted “all sorts of frivolous waivers”<sup>43</sup> Given the secret nature of such waivers especially as the legal and proper mechanism of making such waivers public had been sabotaged, information on such waivers granted is difficult to come by. Such information only become publicly available mainly through press reports when there is

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<sup>42</sup> See Full text of President Olusegun Obasanjo Speech on Presenting Budget 2000 to the joint Session of the National Assembly Abuja November 24, 1999. Downloaded on November 2, 2012 from <http://www.nigeriaworld.com/feature/speech/budget2000.html>

<sup>43</sup> *Punch*, ‘Abuse of Import Duty Waivers.’

a change of government or when there are disputes among the ruling class. The fact that such information is rarely denied and the calibre of officials that sometimes provide such information give credence to the said press reports.

A major beneficiary of the Obasanjo tax and duty waiver illegalities is the billionaire businessman, Aliko Dangote and his Dangote Group of Companies. A Dangote company report published in 2006 showed that at that time, the company controlled 81 percent of the Nigerian sugar market, 40 percent of the cement market, 33 percent of the flour market, 54 percent of the pasta market and 72 percent of the salt market. “The latest figure indicates that the Dangote Group still maintains the first position in each of these commodities; now controlling about 93 per cent of the sugar market, 86 per cent of cement, 73 per cent of flour, 74 per cent of pasta and 89 per cent of salt.”<sup>44</sup> It was therefore not surprising that in 2011, Dangote was listed as the richest man in Africa by Forbes magazine.<sup>45</sup> The entwinement of political patronage and import duty waivers in Nigeria is perhaps best brought out by this case. During the two presidential elections that Obasanjo contested (1999 and 2003), Dangote donated N100 million and N250 million respectively to his campaign. Aside from the above, he also donated N211.6 million towards the construction of Obasanjo’s Presidential Library and cement worth N3 billion towards the construction of the head office of the Obasanjo’s ruling Peoples Democratic Party (PDP) all during Obasanjo’s tenure as President.<sup>46</sup> Based on the above, it was therefore not surprising that some of the companies in the Dangote Group

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<sup>44</sup> Quoted in *The Nation*, ‘Ibeto Cement Imports Just 1.5 Million Metric Tonnes Annually’ (December 28, 2012) <<http://thenationonline.net/new/news/ibeto-cement-imports-just-1-5m-metric-tonnes-annually/>> (January 6, 2013).

<sup>45</sup> See Forbes, ‘Aliko Dangote: Net Worth \$12 b as at November 2012’, (undated) <http://www.forbes.com/profile/aliko-dangote/> (January 11, 2013).

<sup>46</sup> See Sulaiman Kura, ‘Political parties and democracy in Nigeria: candidate selection, campaign and part financing in People’s Democratic Party’, *Journal of Sustainable Development in Africa* 13 (2011), pp.268-298; Frank Kintum,, ‘The Man Aliko Dangote’, (undated) <<http://lakedistrict-investment.com/downloads/TheManAlikoDangote.pdf>> (January 7, 2013); The Money File ‘the Story of Dangote’s Wealth’ (undated) <<http://themoneyfile.com/the-story-of-dangotes-wealth/>> (January 7, 2013); *Guardian*, ‘Obasanjo’s library nets N4 bn’ (undated). <<http://www.utexas.edu/conferences/africa/ads/697.html>> (January 7, 2013); *Nairaland*, ‘Otedola Donates 1 Billion Naira To Pdp , Dangote 3billion. May God Help The Poor’ (November 19, 2008), <<http://www.nairaland.com/197548/otedola-donates-1-billion-naira>> (January 6, 2013); and *Newswatch*, ‘Donations of Controversy’, (May 23, 2005), <http://www.newswatchngr.com/editorial/allaccess/nigeria/10523131440.htm> (December 11, 2012)

were beneficiaries of the indiscriminate custom duty waivers awarded by the Obasanjo administration.

One such company was Dan Salt. Obasanjo gave “illegal generous concessions,” to Dan Salt which included tax, tariff and duty waivers and permission to operate a factory inside Apapa port. The result was that Dan Salt enjoyed “in-equitable” advantage over its competitors. It operated with huge profits while other companies like its older competitor, Union Dicon Salt Company recorded persistent losses and eventually failed. It is such duty waiver frauds that made Obasanjo’s erstwhile Defence Minister, General Theophilus Danjuma, who was incidentally a major shareholder in Union Dicon Company to describe him as “the most toxic leader that Nigeria has produced so far” who “abused Nigeria, deceived Nigeria and deserves a second term in prison.”<sup>47</sup>

Dangote Cement was also another major beneficiary of the Obasanjo administration. It has, for instance, been alleged that the administration helped Dangote Cement to acquire majority shares in Benue Cement Company.<sup>48</sup> It has also been suggested that during the period, Dangote manipulated “his unfettered access to those in the seat of political power in Nigeria... [and] seized virtually full possession of the cement market and swept up some of the highest import quotas of all local companies.”<sup>49</sup> A leaked US Embassy cable on Dangote dated March 7, 2007 reported that “Dangote is counted among President Obasanjo’s inner circle of business advisers” and that it “is no coincidence that many products on Nigeria’s import ban list are items in which Dangote has major interests.” The cable further stated that Dangote “has had success blocking trade and investment that might compete with his enterprises.”<sup>50</sup> As would be seen in

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<sup>47</sup> See *Nigerian Voice*, ‘Revealed: How Dangote tore Danjuma and Obasanjo Apart,’ (June 27, 2009) <<http://www.thenigerianvoice.com/nvprint/525/6/revealed-how-dangote-tore-danjuma-and-obasanjo-apa.html>> (December 11, 2012).

<sup>48</sup> Frank Kintum, ‘The Man Aliko Dangote.’

<sup>49</sup> Sahara Reporters, ‘Cement King: How Aliko Dangote Wangled his Way to Billionaires List,’ (March 10, 2011), <http://saharareporters.com/news-page/cement-king-how-aliko-dangote-wangled-his-way-billionaires-list>> (December 11, 2012).

<sup>50</sup> *The Street Journal*, ‘Wikileaks Cable: Obasanjo’s Unfair Advantage To Dangote Harmed Nigerian & American Markets’ (September 5, 2011), <http://thestreetjournal.org/2011/09/wikileaks-cable-obasanjo%E2%80%99s-unfair-advantage-to-dangote-harmed-nigerian-american-markets/>> (December 11, 2012).

the next section, Obasanjo also aided the Dangote Group by closing down the cement factory of one of his competitors: Ibeto Cement.

Another controversial waiver granted by the Obasanjo administration was the \$3 billion import duty waiver to Western Metal Products Company Limited (WEMPCO) Nigeria Limited, a Chinese company for the establishment of a \$250 million cold rolled steel plant in the country. The Federal Ministry of Finance have tried to address part of the outrage that this transaction caused by clarifying that “the duty concessions and incentives should comprise five percent duty rate across the board on all raw materials for two years, zero percent duty rate and VAT exemptions on all plants and machinery.” Despite this, it remains unclear where the \$3 billion dollars came from. This raises questions about possible abuse of such a waiver through the importation of unrelated items under the cover of such waivers.<sup>51</sup> It is important to note that this waiver, which has been described as a “non transparent business transaction”, was granted in an industry where Nigerian enterprises are active.<sup>52</sup>

Sometimes the illegal waivers granted mainly as political patronage of personal favours have been switched and used for other items not intended in the waiver. One such case came to light recently when a close associate of former President Obasanjo was arrested for doing just that. According to a news report on the subject matter:

In one celebrated case, officials of the Economic and Financial Crimes Commission (EFCC) arrested a businessman connected with former President Obasanjo's elaborate import duty waiver scam. Sam Iwuajoku, owner of Unigate Investments and co-owner

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<sup>51</sup> Such waivers are also sometimes sold to other parties. It has, for instance been reported that the current Minister of Aviation in Nigeria, Mrs Stella Odua-Ogiemwonyin, “a widely acknowledged friend of the President [once] used her influence to secure a waiver of duty for importation of rice valued at N13.5b last year” under the name of Network Supplies Limited. The “enterprise was set up just to secure that particular government concession and nothing more.” The paper was then sold to the controversial Stallion Group owned by the Vaswani Brothers. See *Society Now*, ‘SPG Oil Boss, Stella Odua sells 13.5b Waiver to Vaswani Brothers!’ (undated), < <http://societynowng.com/SPG-Oil-Boss-Stella-Odua-Sells-N13-5b-Waiver-To-Vaswani-Brothers>> (January 7, 2013).

<sup>52</sup> *BusinessDay*, ‘Duty Waiver to Chinese Firm Granted by Obasanjo,’ (October 18, 2008), [http://www.businessdayonline.com/ARCHIVE/index.php?option=com\\_content&view=article&id=686:duty-waiver-to-chinese-firm-granted-by-obasanjo&catid=1:latest-news&Itemid=18](http://www.businessdayonline.com/ARCHIVE/index.php?option=com_content&view=article&id=686:duty-waiver-to-chinese-firm-granted-by-obasanjo&catid=1:latest-news&Itemid=18) (December 11, 2012). See also *Businessday*, ‘FG Grants \$3bn Import Waiver to Chinese Firm’, (October 12, 2008) <[http://www.businessdayonline.com/ARCHIVE/index.php?option=com\\_content&view=article&id=568:fg-grants-3bn-import-waiver-to-chinese-firm&catid=1:latest-news&Itemid=18](http://www.businessdayonline.com/ARCHIVE/index.php?option=com_content&view=article&id=568:fg-grants-3bn-import-waiver-to-chinese-firm&catid=1:latest-news&Itemid=18)> (December 9, 2012) and *BusinessDay*, ‘Fresh Protest Over FG’s Reviewed Waiver to WEMPCO’ (June 14, 2009), [http://www.businessdayonline.com/NG/index.php?option=com\\_content&view=article&id=3187:fresh-protest-over-fgs-reviewed-waiver-to-wempco&catid=1:latest-news&Itemid=50](http://www.businessdayonline.com/NG/index.php?option=com_content&view=article&id=3187:fresh-protest-over-fgs-reviewed-waiver-to-wempco&catid=1:latest-news&Itemid=50)> (December 11, 2012).

of Gibraltar-based Seaside View Management Limited. The shadowy Iwuajuoku, who has little or no public profile, is a known associate of Senator Emmanuel Andy Uba, Obasanjo's former senior assistant for domestic affairs. Investigations revealed that Mr. Sam Iwuajoku received an import waiver from Obasanjo in 2003 under the pretext of engaging in construction work in the Niger Delta. Instead, Iwuajoku used the waiver to import iron rods and rice, raking in more than 100 billion naira in personal gains. In one instance, according to our source, he imported three shipments of rice and paid nothing in duties to the Federal Government.<sup>53</sup>

Like most fraud investigations in Nigeria, nothing has been heard of this case and investigations ever since.

Another notable beneficiary of the Obasanjo duty waiver bonanza was the Redeemed Christian Church of God. It has been alleged that the General Overseer of the Church, Pastor Enoch Adejare Adebayo, exploited his close links with Obasanjo to get indiscriminate import duty waivers that “cost Nigeria a whopping N20 Billion in revenue loss between 2006 and 2007”. In the year 2006 for instance, “RCCG got an import waiver of N9,831,109,309.00 through certificate no. BO/REV/12235/S.2/T.133 to import construction materials; generators and vehicles. The value of the imports was N49,155,546,846.00.”<sup>54</sup> Although the Government, arguably because of pressure from several quarters announced the stoppage of the granting of indiscriminate duty waivers in 2006, it failed to keep to its word.<sup>55</sup> In 2007, the same RCCG through certificate number BO/R10260/V111/161, “was granted rights to import building/construction materials....[valued] at N48,988,454,876.00 with a total waiver of N9,757,690.975.20. The two waivers total N19,588,800,284,20.” Like in the case of Sam Iwuajoku, some of the illegal waivers were also exploited for economic gain. It was for instance alleged that many of the “luxury cars that were said to have been imported through the deal were not meant for private use. They were said to

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<sup>53</sup> Nigeria Politico, ‘Import Waivers: How the Presidency, Politicians, the business elite and foreigners rip Nigeria of Billions’ (Undated), <<http://nigeriapolitico.com/importwaivers.html>> (December 9, 2012).

<sup>54</sup> *Nairaland*, ‘Adebayo, Redeem Church Leader In N20 Billion Import Waiver Scandal - Politics – Nairaland’ (November 5, 2007), <http://www.nairaland.com/91292/adebayo-redeem-church-leader-n20>> (December 9, 2012). See also *Pointblanknews*, ‘Adebayo, Redeem Church Leader in N20 Billion Import Waiver Scandal’, (Undated) <http://www.pointblanknews.com/os635.html>> (December 8, 2012).

<sup>55</sup> See *Daily Trust*, ‘Obasanjo Stops Import Duty Waivers, Duty Exemptions’ (August 23, 2008) <<http://allafrica.com/stories/200508240036.html>>, (January 7, 2013).

have been sold at several car dealerships across the country.”<sup>56</sup> As would be seen in the next section, even after Obasanjo completed his tenure, as President, this practice of granting illegal indiscriminate waivers have been continued by his successors.

## The abuse of duty waivers in Nigeria after Obasanjo

In May 2007, President Obasanjo handed over power to President Shehu Musa Yar’Adua. On August 23, 2007, President Yar’Adua directed that the issuance of waivers, exemptions from taxes, duties and tariffs to individuals, companies or organizations, be suspended with immediate effect. According to the then Finance Minister, Samsudeen Usman, Speaking at a Ministerial Press Briefing tagged “The New Road Map to Economic Reforms”, Shamsudeen Usman, the then Finance Minister, asserted that “the suspension became necessary to plug a number of revenue leakages through which corruption was perpetrated in the last three years.” He further stated that “the amount of waivers given so far was alarming” and pointed out that “the Comptroller-General of Customs told us that one particular waiver was granted ten times over.” Furthermore, “a lot of state governments, private sector operators and churches were being granted [waivers] indiscriminately. Somebody was organizing a game and was asking for waivers to import 600 cars.”<sup>57</sup>

President Yar’Adua later reinforced this position when fielding questions from about 300 members of the China Council for the Promotion of International Trade (CCPIT). Yar’Adua specifically made it clear that no investor in Nigeria, whether foreign or local, would be given preferential treatment over another. In response to a question, the President Yar’Adua stated that asserted thus the “concessions we give are on [a]

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<sup>56</sup> *Pointblanknews*, ‘Adeboye, Redeem Church Leader in N20 Billion Import Waiver Scandal.’

<sup>57</sup> *Thisday*, ‘Nigeria: Yar’Adua Suspends Waivers, Tax Exemptions’, (August 24, 2007). <http://taxjusticeafrica.blogspot.com/2007/08/nigeria-yaradua-suspends-waivers-tax.html>> (December 11, 2012)

sectoral basis, especially for pioneer businesses. But we will not grant waivers or concessions to any investor on [a] preferential basis.”<sup>58</sup>

The abuse of fiscal rules by the Obasanjo administration was however extended to other spheres of business regulation in the country. This ensured that once President Yar’Adua was inaugurated, he was inundated with petitions from businesses protesting about their unfair treatment under the Obasanjo administration. One such company was the Ibeto Cement Company which was granted investment incentives by the Obasanjo administration and later shut down by the same administration. It is widely believed that the closure of the said Ibeto Company during the Obasanjo administration was instigated by his competitor Dangote Cement. The story of these bizarre developments in Ibeto Cement has been told by the Executive Director Strategy and Public Affairs of Ibeto Cement, Ben Aghazu thus:

the federal government had issued a guarantee to Ibeto Cement Company Limited that the company’s proposed cement bagging plant in Bundu Ama, near Port Harcourt, shall operate for a minimum period of 10 years from commissioning so as to meet the strict funding requirements of the lending institutions. The federal government had also encouraged the company with appropriate incentives such as reduced duty on imported equipment and waiver of Value Added Tax (VAT)... However, in September 2005, a mere three months after our gleaming new plant began operation, the cement cartel, led by Dangote Cement, used its reach in the federal government, to unjustifiably and unexplainably close down the operation of the Ibeto bagging plant... after various efforts of appeal to the federal government failed, the company went to court in 2006 to seek justice.<sup>59</sup>

Although Ibeto went to court to seek redress during the Obasanjo administration, it was not until 2007, after Yar’Adua came to power that the matter was resolved out of Court with the cooperation of the Yar’Adua administration.<sup>60</sup> This was through a consent judgment entered by the Federal High Court in Suits Number FHC/ABJ/CS/400/2006

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<sup>58</sup> See Olusegun Adeniyi (2012), *Power, Politics and Death* (Lagos, Prestige/ Kachifo Limited).

<sup>59</sup> *Leadership*, ‘Cement Glut: Ibeto debunks Dangote’s Claim on Imports’ (January 2, 2013) <[http://www.leadership.ng/nga/articles/43946/2013/01/02/cement\\_glut\\_ibeto\\_debunks\\_dangotes\\_claim\\_imports.html](http://www.leadership.ng/nga/articles/43946/2013/01/02/cement_glut_ibeto_debunks_dangotes_claim_imports.html)> (January 9, 2013)

<sup>60</sup> See Adeniyi, ‘Power, Politics and Death’,



and FHC/ABJ/CS/496/2010. In the judgment order, the federal government acknowledged that the Ibeto Cement Company Bagging Plant was “unjustifiably closed down”. The government also acknowledged “the enormous losses suffered by Ibeto Cement Company from the unjustified closure from 2005 to October 2007,” It was in line with the above that part of the judgment ordered the Federal Government to pay Ibeto Cement N7.8 billion for the unjustified closure of its plant between 2005 and 2007.<sup>61</sup> The judgment further stipulated that Ibeto Cement should be allowed to import 1.5 million tonnes of bulk cement per annum for the period from October 1, 2007 - September 30, 2017 in line with the federal government guarantee conveyed in the ministry of Industry letters, reference HMSI/EXT/CORR/VOL.X/350 of June 5, 2002 and HMSI/EXT.CORR/VOL.XII/127 of November 29, 2002. The consequence of this judgment is that Ibeto Cement is now the only authorized importer of bulk cement in the country. Interestingly, Dangote Cement has now taken the Federal Government to Court alleging discrimination in the granting of license to Ibeto Cement for the importation of bulk cement.<sup>62</sup>

Another company that also petitioned President Yar Adua alleging unjust treatment under President Obasanjo was the Stallion Group. Specifically, Obasanjo deported the three Indian brothers who own the group: Sunil, Haresh and Mahesh Vaswani in 2006 over alleged tax evasion. Yar’Adua again consented to the Court judgment that facilitated their return to Nigeria. The reason for this has been explained thus:

Yar’Adua... forwarded [the petition of the Vaswani Brothers] to the AGF [Auditor General of the Federation], the Ministry of Interior, EFCC and Customs for their comments. While the Ministry of Interior insisted that since the deportation was done on the orders of his predecessor it should not be reviewed, EFCC said their investigations against the Vaswanis had not been completed before their deportation was effected. The decision of the federal

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<sup>61</sup> *Nation*, ‘Dangote Loses Bid for Speedy Hearing on Suit Against Competitor, July 10, 2012), <http://www.thenationonlineng.net/2011/index.php/news/53326-dangote-loses-bid-for-speedy-hearing-of-suit-against-competitor.html>> (December 8, 2012).

<sup>62</sup> See *Daily Times*, ‘Dangote Vs. Ibeto: Judge Wants Single Hearing’, (July 4, 2012), <http://dailytimes.com.ng/article/dangote-vs-ibeto-judge-wants-single-hearing>> (December 8, 2012) and *Nation*, ‘Federal Government, Dangote in Legal Battle over Cement Import Waiver’, (June 5, 2012) <<http://www.thenationonlineng.net/2011/index.php/law/49039-fed-govt-dangote-in-legal-battle-over-cement-import-waiver.html>> (December 8, 2012).



government to deport them as at the time it did was therefore considered hasty, a position that had been canvassed by Prince Bola Ajibola, former attorney general of the federation and retired judge at the International Criminal Court in Hague. Ajibola had written the president a letter on the issue. In the end, the president kept faith with the rule of law by directing that the deportation be rescinded.<sup>63</sup>

As stated above, this is the same group that was alleged to have bought duty waiver papers from Network Supplies Limited. More recently, former President Obasanjo has alleged that the Stallion Group as at September 2011 “have enjoyed over N50 billion (\$316m) in waivers and things they have brought in corruptly.”<sup>64</sup> This allegation was also repeated in the Federal House of Representatives culminating in an investigation by the House.<sup>65</sup> On their part, the Vaswani Brothers have strenuously denied this allegation.<sup>66</sup> The result of this investigation is still pending.

The promise of the Yar’Adua administration not to grant duty waivers in order to create a level playing field for industries in the country however did not last. Shortly after suspending the duty waiver malpractice, his administration went ahead to revalidate some of the waivers that were granted by the Obasanjo administration. One such waiver was that given to an Indian firm: African Steel Mills Nigeria Limited. The company was said to have “made a case for revalidation of the waiver, citing a factory expansion project.” African Steel Mills (Nigeria) Limited subsequently, at different times, imported several ship loads of steel without paying the required import duties. Unfortunately, the materials are not all used for the purpose approved. “When they

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<sup>63</sup> See Adeniyi, ‘Power, Politics and Death’.

<sup>64</sup> *Daily Trust*, ‘FG Grants N50 Billion Waiver to Vaswani Brothers- Obasanjo’, (November 16, 2011) <http://allafrica.com/stories/201111160950.html>> (December 5, 2012).

<sup>65</sup> See *Vanguard*, ‘N50bn tax waivers: Reps to probe Vaswani Brothers’, (November 18, 2012), <http://www.vanguardngr.com/2011/11/n50bn-tax-waivers-reps-to-probe-vaswani-brothers/>> (December 8, 2012) and *Daily Times*, ‘Vaswani Brothers Face Fresh Criminal Probe,’ (November 18, 2011) <http://dailytimes.com.ng/article/vaswani-brothers-face-fresh-criminal-probe>> (December 8, 2012)

<sup>66</sup> See *Guardian*, ‘Vaswani’s hail Reps Probe on 50Bn Waivers’ (November 21, 2011) <<http://www.vanguardngr.com/2011/11/vaswanis-hail-reps-probe-on-n50bn-waivers/>> (December 8, 2012); *Leadership*, ‘We got no Rice Waiver- Vaswani Brothers’, (November 21, 2011) [http://leadership.ng/nga/articles/8697/2011/11/22/we\\_got\\_no\\_rice\\_waiver\\_%E2%80%93\\_vaswani\\_brothers.html](http://leadership.ng/nga/articles/8697/2011/11/22/we_got_no_rice_waiver_%E2%80%93_vaswani_brothers.html)> (December 8, 2012) and *Tribune*, ‘We got no Rice Waiver, We didn’t ask for any- Vaswani Brothers’, (November 21, 2011), <http://www.tribune.com.ng/index.php/news/31535-weve-got-no-rice-waiver-we-didnt-ask-for-any-vaswani-brothers>>, (December 8, 2012)

import these materials, they divert a chunk to a sister company.... From there, they sell in the open market.” In one transaction in 2008, the company “imported 4,000 metric tons without paying a kobo as import duty to the government”. Without the waiver, the company would have paid “20 per cent duty (N80million); seven per cent surcharge on duty (N5.6million) and five per cent VAT (N24.56million) amounting to N110.6million”. With its waiver, however, “the company paid a paltry N5.6million, scheming off about N104.56million, in a transaction that reeks of scam.”<sup>67</sup>

President Yar’Adua’s administration was however short-lived. When the President died on May 5, 2009, he was succeeded by his deputy, Goodluck Jonathan. The President Jonathan administration has also been extensively involved in this illegal practice of granting waivers to businesses. In September 2011, as already mentioned, the Minister of Finance Ngozi Okonjo-Iwaeala announced that the powers to grant waivers had been transferred from the President to the Economic Team. Such a pronouncement meant that the Government was simply replacing one illegality with another illegality. This is so because there is no mention of the “Economic Team” in the laws governing the granting of custom duty waivers in Nigeria. On 30th November 2011, Daily Trust exclusively reported that the Federal Government granted rice and palm oil import duty waivers amounting to about N150 billion to 10 companies, with one of them securing the duty write offs 164 times since February 2011.<sup>68</sup> Later in the year, the President directed that no import waiver should be granted in the 2012 fiscal year.<sup>69</sup> This like all previous policy directives did not stand the test of time.

On July 19, 2012, the Chairman House Committee on Finance Abdulummin Jibrin asserted during a debate on the alleged non-implementation of the 2012 budget by the Federal Government at the plenary session of the House that “documents submitted to his committee by the Federal Ministry of Finance, Federal Inland Revenue Service

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<sup>67</sup> *Nigeria Daily News*, ‘How Indian Firm Abuses Import Duty Waiver’ (August 31, 2008) <http://ndn.nigeriadailynews.com/templates/?a=11944>> (January 11, 2013).

<sup>68</sup> *Daily Trust*, ‘Nigeria: Rice, Palm Oil Imports- FG Grants N150 Billion Waivers to 10 Firms in 10 Months’ (November 30, 2011) <http://allafrica.com/stories/201111300315.html>> (January 10, 2013)

<sup>69</sup> See *Punch* Newspaper downloaded on October 29, 2012 from <http://beta.jangola.com/news/business/1498-fg-stops-import-duty-waiver.html>

(FIRS) and the Nigeria Customs Service (NCS) indicate that the government was still granting import waivers to some few individuals to import such items despite policy stopping it.” He further asserted that detailed analysis of the documents showed that “on the average, the government has granted minimum of N2 billion waivers per month from January to date to import rice, palm and vegetable oil”, and that “in the month of May 2012 alone, the government granted N39 billion waivers to some few individuals.”<sup>70</sup>

Duty waiver is also abused when government grants waivers for developmental projects that have sectional appeal. Recently, for instance, President Goodluck Jonathan granted Ebonyi State import duty waiver worth N1.2 billion on the ductile iron pipe and accessories for the Oferekpe mega water scheme.<sup>71</sup> While this no doubt will help improve the welfare of the people living in the state, the fact remains that such indiscriminate approvals distorts the principles of revenue allocation and sharing in a federal state. It is for instance legitimate for other states whose water projects have not benefited from such waivers to protest it on the above grounds. In this direction, it is important to remember that, as already stated, the Federal Government had in 1990 removed government contracts from the schedule of transactions granted duty waivers.

It is no doubt because of the above abuses that the National Assembly has now commenced the process of repealing the Customs and Excise Management Act and replacing it with a Customs Service Act. One of the objectives of this exercise is to curtail the powers of the President to grant such duty waivers. According to the Chairman of the Senate Finance Committee, Ahmed Makarfi, “the President must be stripped of arbitrary powers to grant import [duty] waivers.” He further stated that the “general view in the National Assembly is that such powers must not be exercised by any individual except if the legislature, by some legislation or resolution, takes a

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<sup>70</sup> See *Daily Trust*, ‘FG Still Grants Rice, Palm Oil Waivers- Reps’, (Undated), <http://www.nairapark.com/forum/index.php?topic=34529.0&t=nigeria-news-daily-trust-news-fg-still-grants-rice-palm-oil-waivers-reps&v=m> (January 11, 2013).

<sup>71</sup> See *Daily Times*, ‘FG Grants Ebonyi Import Duty Waiver’ (October 2, 2012) <<http://dailytimes.com.ng/article/fg-grants-ebonyi-import-duty-waiver>> (January 10, 2013).

decision about it.”<sup>72</sup> Another objective of this exercise is to make Customs more independent of Government. Not surprisingly, the same government that has illegally abused the said Customs Act is now opposing the proposed changes. According to the Minister of Finance:

The bill gives significant powers to the Customs Service and ordinarily this should not be a bad thing, but it does remove powers from the President and the minister that we think are necessary to ensure that the economic agenda of the country are properly carried out as directed by the President and delegated to the minister.<sup>73</sup>

In our view the highlighted proposed amendments to the Customs Act are unnecessary. Granting more powers to a Customs Service that is publicly acknowledged to be very corrupt will change nothing.<sup>74</sup> The Minister of Finance is right that the economic agenda of the country must be driven by the President and his team. The focus of the National Assembly must be to call the President to order when he breaks the law. This is what the President(s) have consistently done when duty waivers are granted in secret and are not caused to be gazetted before coming into effect. The transparency of ensuring that this is done will no doubt greatly reduce any arbitrariness in the granting of such waivers. Granting concurrence powers to the National Assembly before waivers can be granted is also not advisable. In a corrupt oil rent dependent country like Nigeria, this will also be abused. It will simply provide members of the National Assembly with a bargaining chip to get their ‘fair’ allocation of the indiscriminate duty waivers. The problem therefore lies in enforcing existing laws rather than in making new ones.

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<sup>72</sup> *Daily Trust*, ‘Nigeria: Govt lost N50 Billion to Waivers this Year’, (November 6, 2012), <http://allafrica.com/stories/201211060769.html>> (December 8, 2012).

<sup>73</sup> *Vanguard*, ‘Presidential Import Waivers: For Good or Bad?’ (November 12, 2012), <http://www.vanguardngr.com/2012/11/presidential-imports-waivers-for-good-or-bad/>> (December 8, 2012) <http://allafrica.com/stories/200508240036.html>

<sup>74</sup> See Keynote address of the Honourable Minister of Finance at the 2007 Comptroller General Annual Conference holding in Sokoto from Monday 26<sup>th</sup> to Friday 30<sup>th</sup> November 2007 <[www.customs.gov.ng/Publications/getPublication.php?id=7](http://www.customs.gov.ng/Publications/getPublication.php?id=7)> (January 28, 2013); and Comptroller General of Customs Opening Speech at the 2007 Comptroller General Annual Conference holding in Sokoto from Monday 26<sup>th</sup> to Friday 30<sup>th</sup> November 2007. <[https://www.customs.gov.ng/Publications/library\\_materials.php](https://www.customs.gov.ng/Publications/library_materials.php)> (January 28, 2013)

## Conclusion

This paper has investigated the origins, law and practice of duty waivers in Nigeria. It argues that the brazen abuse of custom duty waivers in Nigeria is a consequence of the rentier nature of the Nigerian state which has progressively eroded the inherent internal controls for prudent fiscal relationships among the various tiers of government in a federal state. This paper has also shown that since the Obasanjo civilian administration in Nigeria, custom duty waivers have been consistently abused by all Nigerian Presidents. Such abuses have culminated in the current attempt by the National Assembly to amend the Customs Act in order to strip the President of his powers to grant duty waivers. This however cannot be the solution. The problem is not with the existing law but with its implementation. This is so because the granting of indiscriminate customs duty waivers documented above were all done outside the boundaries of the law. The basic requirement that such waivers be gazetted before they become effective is rarely adhered to. An effective strategy towards addressing this problem would be for the National Assembly to hold the President accountable when duty waiver laws are flouted. Admittedly, this will not be easy in an oil rent economy like Nigeria. As President Jonathan has once asserted, “it would be difficult to form a viable citizenry that could call government to account for its stewardship if the economy depends solely on oil revenue.”<sup>75</sup> In the context of a rentier state, the proposed plan by the National Assembly to grant itself concurrence powers before waivers can be granted by the President should be discouraged because it will be abused. It will simply provide members of the National Assembly with a bargaining chip to get their ‘fair’ allocation of the indiscriminate duty waivers. This will aggravate the problem rather than solve it.

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<sup>75</sup> *ThisDay*, ‘Jonathan: pay taxes, hold govt accountable’, 11 October 2010, <<http://www.thisdaylive.com/articles/jonathan-pay-taxes-hold-govt-accountable/76868/>> (3 July 2012). For further analysis of this point see See Jane Guyer, ‘Representation without taxation: An essay on democracy in rural Nigeria, 1952–1990’, *African Studies Review* 35, 1 (1992), pp. 41–79, p. 42.