EXAMINATION OF THE LEGAL AND INSTITUTIONAL FRAMEWORK FOR COMBATING THE INFLUX OF SUBSTANDARD PRODUCTS INTO NIGERIA*

Abstract

The influx of substandard products into Nigeria has become quite alarming. Different products and goods from diverse countries have continued to flood the country without much restraint. Many products that are imported into the country fail to serve the purpose for which they were purchased. This challenge seems not to be getting the required attention for a reduction or eradicating the problem altogether. The article examined the factors aiding the influx of substandard products into the country, the legal and institutional framework that are in place to stem the tide were critically examined. The article also identified the challenges faced by the institutions saddled with the responsibility of checking proliferation of substandard goods in the country. Conclusions were drawn and suggestions proffered to reduce the challenges discussed.

Keywords: substandard, products, influx, curb, legal framework

Introduction

The rate at which substandard goods flood the Nigerian markets is a call for concern. Due to the large population of the country, inability to produce basic goods and services, porous borders and lax regulations, products from neighbouring countries have continued to make an inroad into Nigeria. The few manufacturing lines that are operational in the country have become redundant due to the deluge of substandard products foisted on the country by unscrupulous business people. Different sectors of the economy are affected, but the electrical electronics, automotive, agriculture supplies, food and pharmaceutical goods are largely

affected. Considering the rate at which many of the products ranging from electrical appliances, construction materials, apparels, household items flood the market from different countries especially China have become worrisome. Factors aiding the influx of substandard products are numerous. The products are often cheaper, but not durable and often without value for money. Oftentimes, the consequences of the procurement of substandard products have in some instances especially in the area of building and electrical materials led to loss of resources and of lives in extreme cases. Since Nigeria is a consuming nation as of now, much problem is from imported materials even though some unscrupulous local manufacturers are part of the problems of substandard products. However, counterfeit or fake drugs are not within the scope of the article.

Institutions charged with the regulation of products

SON is the agency of government charged with the power to prescribe standards and certification for products. It is to actualize the policy of the federal government on prevention of the importation of substandard and unsafe products into Nigeria. Other institutions include the customs service of Nigeria and the federal competition and consumer protection council.

Standard Organization of Nigeria (SON) Act.

The SON Act was+ repealed and re-enacted as the SON Act 2015. The agency is charged with the regulation ad registration of standard marks and specification of products in Nigeria whether

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¹ Thisday, Tackling the Menace of Substandard Goods https://www.thisdaylive.com/index.php/2019/10/27/tackling-the-menace-of-substandard-goods/posted 27/10/2019, accessed 20/08/2020

produced locally or imported. The SON regulates electronic, automotive products, toys, construction materials, appliances, paper and stationery, protective equipment.² The functions of the SON are spelt out in section 5 of the Act. Section 5 (1) subject to the provision of section 4 of this Act, and any other law in that regard the organisation shall organize tests and do everything necessary to ensure compliance with standards designated and approved by the Council.³Undertake investigation as necessary into the quality of facilities, systems, services and materials and product, whether imported or manufactured in Nigeria.⁴ Evaluate quality assurance activities, including certification of systems, products and laboratories throughout Nigeria, 5 compile an products in Nigeria inventory of the requiring compile Nigerian industrial standardization. standard specification⁷ develop methods for testing materials, supplies, equipment including items purchased, whether locally manufactured or imported for the use of the government of federation, state and private establishments⁸establish an import and export product surveillance, Certification and Conformity Assessment Scheme 9 establish a mandatory conformity assessment programme for locally manufactured products in Nigeria, ¹⁰ register and regulate standards, marks

² Amira Daoui, Nigerian Import Regulationshttps://www.waystocap.com/blog/nigerian-importregulations/accessed 18 August 2020

³ Section 5(a) SON Act 2015

⁴ S. 5(b)

⁵ S. 5(c)

⁶ S. 5(e)

⁷ S. 5(f)

⁸ S. 5(g)

⁹ S. 5(h)

¹⁰ S.5 (i)

certification, ¹¹ undertake registration of all manufactured products distributed, marketed and consumed throughout Nigeria. ¹²

In order for SON to be able to carry out these functions; the holder of the right is required to register its products, and obtain appropriate SON Conformity Assessment Programme certificate, pay due port inspection charges; and provide evidence of trademark ownership. It is highly commendable that SON has risen to the occasion to rid the country of substandard products as seen in the number of confiscations and cases being prosecuted in the courts. However, the agency needs to continue to be vigilant and cooperate with other agencies to safeguard the nation's economy, and ensure consumers get satisfaction from products purchased. Also, in order to regulate products that are manufactured locally, the Mandatory Conformity Assessment Programme (MANCAP) Certification is a prerequisite for the standardization. The fulfilment of this requirement will help local

¹¹ S.5(k)

¹² S.5(1)

¹³Jackson, Etti and Edu, Procedures and strategies for anti-counterfeiting: Nigeria https://www.worldtrademarkreview.com/anti-counterfeiting/procedures-and-strategies-anti-counterfeiting-nigeria-0 posted

²⁴ May, 2018, accessed 28 May 2020

¹⁴ SON impounds substandard roofing sheets,

https://thefreezonechannel.com/2019/09/04/son-impounds-substandard-roofing-sheets/accesed 28 may 2020, SON impounds 480 million Substandard Phone Accessories,

https://economicconfidential.com/2019/10/son-n480m-substandard-phone-accessories/accessed 28 May 2020 Victor Adeoti, SON impounds 150 million substandard products in 2016

http://globalvillageextra.com/en/index.php/2017/04/23/son-impounds-n150m-substandard-products-in-2016/accessed 28 May 2020

manufacturers to compete favourably with imported products, increase revenue for government and provide jobs.

SONCAP verifies the conformity of all products imported into Nigeria except those that appear on the Excluded Product List and enforces their standards. Compliance to the requirements of SONCAP is applicable in addition to any existing import processes.¹⁵

Nigeria Customs Service

The statutory functions of the Nigeria Customs Service are numerous but in relation to the article, the functions that will be examined is of anti-smuggling activities. Smuggling is the major conduit for the importation of substandard and prohibited products into the country. The customs service is in charge of the airports, sea ports and land borders of the country. The sea ports are the major recipients of the imported products and are better manned by the officials of the different agencies charged with inspection and verification. The designated land borders are manned at the various points. Yet, there are many illegal routes that are not taken care of, which act as leeway for transiting all kind of products ranging from: legal, illegal, standard and substandard. The land borders seem too porous for regulating products coming into the country; as smugglers perpetuate their nefarious activities with impunity. For many of these smugglers take illegal routes to evade payment of duties, while others bring in prohibited products and substandard products which ordinarily have not been subjected to the prescribed certifications as required before importation. Some of the methods employed by

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¹⁵https://www.intertek.com/government/product-conformity/exports/nigeria/accessed 19/8/2020

importers of substandard products include counterfeiting of documents and making false declarations. ¹⁶

The Minister is empowered to make regulations restricting the importation or exportation by land or inland waters of all goods or of any class or description of goods to such hours and such routes as may be prescribed by the regulations.¹⁷ Any person that contravenes or fails to comply with any regulation made under the section is liable to a fine of two hundred naira and any good in respect of which the offence was committed shall be forfeited.¹⁸ Also, where goods are imported, landed or unloaded contrary to any prohibition,¹⁹ or goods are imported concealed in a container holding goods of a different description,²⁰ or imported goods are concealed or packed in any manner appearing to be intended to deceive an officer,²¹ or imported goods are found, whether before or after delivery, not to correspond with the entry made thereof, those goods shall be forfeited.²²

However, it is noted with dismay that some of the items on the prohibited list like used compressors, fridges, freezers, used and retreaded pneumatic tyres are still being smuggled into the country at an alarming rate, especially through land borders. These destructive tendencies are sometimes perpetrated with the connivance of enforcement officials. As regards used tyres, the federal road safety campaign against the ills of using retreaded

¹⁶ Section 161 Customs and Excise Management Act, CAP 84

¹⁷ Section 18 (1)(a) "

¹⁸ Section 18(2) CEMA

¹⁹ Section 46 (b) CEMA

²⁰ Section 46 (d) CEMA

²¹ Section 46 (e) "

²² S. 46(f)CEMA

and second-hand tyres should be stepped up. Also, the government should look into the challenges of facing the manufacturing sector in order to reduce trade in substandard products.

Federal Competition and Consumer Protection (FCCP) Act²³ Section 18 of the Act charge the council with powers to prevent the circulation of goods or services which constitute a public hazard or an imminent public hazard,²⁴ compel manufacturers, suppliers, dealers, importers, wholesalers, retailers, providers of services and other undertakings to comply with the provisions of the Act.²⁵

The council will cause quality tests to be conducted on consumer goods as it deems necessary, 26 compel manufacturers, suppliers, wholesalers, retailers, dealers, importers, or other undertaking to where appropriate certify that all standards are met in their goods and services; and give public notice of any health hazard associated with their goods or services; 27 seal up any premises on reasonable suspicion that such premises contain, harbor or are being used to produce or disseminate goods or services that are fake, substandard, hazardous or inimical to consumers' welfare in collaboration with relevant sector regulators 28

²³Federal Competition and Consumer Protection Act 2018

²⁴ Section 18(b) FCCP Act

²⁵ S. 18(c) FCCP Act

²⁶ S. 18(d) FCCP Act

²⁷ S. 18(e)(i & ii) FCCP Act

²⁸ S. 18(f) FCCP Act

Also part 3 section 17 empowers the council to protect and promote consumer interests;²⁹ regulate and seek ways and means of removing or eliminating from the market, hazardous goods and services, including emission, untested, controversial, emerging or new technologies, products or devices whatsoever, and cause offenders to replace such goods or services with safer and more appropriate alternatives; 30 publish, from time to time, list of goods and services whose consumption and sale have been banned, withdrawn, restricted or are not approved by the Federal Government or foreign governments 31 organise or undertake campaigns and other forms of activities capable of promoting increased private and public consumer awareness³² encourage trade, industry and professional associations to develop and enforce in their various fields quality standards designed to safeguard the interest of consumers³³ and cause all imported goods to be registered for traceability whenever the need arises.³⁴ The council is also mandated to collaborate with consumer protection groups and associations for consumer protection purposes: 35 ensure that consumers' interests receive due consideration at appropriate fora and provide redresses to obnoxious practices or the unscrupulous exploitation consumers by companies, firms, trade associations or individuals; ³⁶ ensure the adoption of appropriate measures to guarantee that goods and services are safe for intended or

²⁹ S. 17 (1) FCCP Act

³⁰ S. 17(m) FCCP Act

³¹ S. 17(n) FCCP Act

³² S. 17(o) FCCP Act

³³ S. 17(p) FCCP Act

³⁴ S. 17(q) FCCP Act

³⁵ S. 17(q) FCCP Act

³⁶ S. 17(s) FCCP Act

normally safe use;³⁷ collaborate with international organisations and agencies, firms, organisations, groups or persons for the purposes of exchange of information to locate the source of substandard goods; collaborate with government agencies or professional bodies in establishing and using laboratories, testing facilities, common procedures in ensuring or enforcing standards of consumer goods or in assessing the quantum of loss or damage.³⁸ To act generally to reduce the risk and injury which may occur from consumption of certain consumer items and other services rendered to consumers which action may include restriction or prohibition.³⁹

Manufacturers Association of Nigeria (MAN)

The MAN is not a creation of any law in Nigeria, but it is a relevant stakeholder in the fight against proliferation of substandard products in the country. This is an association of local manufacturers and businesses in Nigeria. They are major stakeholders in coordinating the activities of manufacturers in the country. The Association provides a platform for the private sector to formulate and articulate policy suggestions that would be complementary to government efforts. MAN is in business to create a climate of opinion in this country in which manufacturers can operate efficiently and profitably for the collective interest of the members. If MAN is able to check the activities of the members to make sure they abide by the laws of the land, then it will go a long way to safeguard their businesses too, since substandard products put their investments at risk

Tremendous challenges need to be surmounted in the efforts to rid the country of substandard products, which include the need

³⁷ S. 17(t) FCCP Act

³⁸ S. 17(u) FCCP Act

³⁹ S. 17(x) FCCP Act

to upgrade to technology driven processes for monitoring and verification of products. Laboratories and testing centers should also be upgraded and develop technical expertise to address issues as they arise. Therefore, funding must be adequate to carry out their activities. Also, issues of corruption in the agencies needs to be addressed, so that the citizens and investors will have confidence in the fight against substandard products

Factors Aggravating the Influx of Substandard Products

Different categories of products find their way into the country through several legitimate and illegitimate ways. Such products include but not limited to building materials, household items, electronics like iron, kettle, grinding and blending machines, hotplates, phones and electrical components, tyres, food and drugs, apparel, shoes and many more. Some of the factors identified as aggravating the rise in influx of substandard products in the country are discussed below

Energy Crisis

The manufacturing and production sector of the country has been redundant for so many years due to infrastructure decay especially in the power sector. The sector has gone comatose and in dire need of resuscitation. This is majorly due to the problem of epileptic electricity supply. Other infrastructural deficits plaguing the country like bad roads and the high cost of energy in the country and many other factors have driven many production outfits out of the country to neighbouring countries like Ghana⁴⁰ where electricity is regular and the country boasts of better infrastructure. Manufacturing companies like: Patterson and Zochonis.

⁴⁰ https://www.proshareng.com/news/General/Why-companies-will-continue-to-leave-Nigeria-for-Ghana-/7324information accessed 5 November 2019

High cost of doing business in Nigeria is another major challenge in the country. From the high cost of registration of business with the Corporate Affairs Commission (CAC) to taxation of businesses is a major challenge. Even though the CAC has tried to make the process easier by registering a business online, the problem of server not performing optimally and deliberate sabotage of the online registration process by corrupt officials of the CAC is a major issue that should be addressed. Payment of tax by business entities in the country is a big burden as they groan under the burden of multiple taxation by different agents of government from federal, state and local governments

Apathy towards locally made products: There is a general apathy of the Nigerian populace towards locally manufactured products especially in the clothing and shoe sector. A large number of the people apart from the high cost of purchase, also decry the poor quality of most Nigerian made goods. Many prefer to buy second hand goods with the claim that they are more durable and gives value for money.

Inflation

The inflation rate in the country is spiraling out of control at every given time and any investor will be wary of an unstable economy in order to protect their investments.

Insecurity

Insecurity is another major problem the country is grappling with. Issues of insurgency, kidnapping of expatriates and even locals for ransome, and the gory killings and maiming resulting thereby are horrendous enough to make an investor have a rethink. Insecurity is one of the factors that can make investors divest from

an economy because personnel, assets and infrastructure are not secured.

Smuggling

Many of the tonnes of substandard goods find their way into the country through smuggling from the different illegal routes. Unfortunately, the legal borders too are full of many illegal activities. With the recent directive of the federal government to shut all land borders, it will go a long way to reduce smuggling of substandard products into the country. The only nagging issue is that of the countless unmanned illegal routes into the country where smuggling activities are still ongoing despite the closure.

Impacts of the Influx of Substandard products Economic Impacts

The economic impacts of the influx of substandard goods into the country are enormous. 41 Such impacts include the loss of tax and revenue to the government, suffocation of the local industry, 42 relocation of industries from Nigeria to other countries. 43 It also brings about increased unemployment rate. All these factors brings a fall in the gross domestic product (GDP) of the country

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⁴¹B. Udoh, 40 percent of goods in Nigeria are substandard counterfeit https://www.premiumtimesng.com/opinion/166460-interview-40-per-cent-of-goods-in-nigeria-are-substandard-counterfeit-

son.html#sthash.70kyf31h.Dgp1UqHY.dpbs accessed 5 November 2019 ⁴² G. Anyebe, How Fake and Substandard products Threaten the Economy https://economicconfidential.com/2015/02/how-fake-substandard-products-threaten-the-economy/accsessed 5 November 2019

⁴³ V.O. Ogunro, Nigeria's Business Environment: Issues, Challenges and Prospects, International Journal of Academic Research in Business and Social Sciences [2014] (4)(4): 132-13, ISSN: DOI: 10.6007/IJARBSS/v4-i4/770, URL: http://dx.doi.org/10.6007/IJARBSS/v4-i4/770 accessed 6/11/2019

and leads to increase in the rate of poverty. Nigeria is said to be losing about 15 billion naira annually due to substandard and fake products.⁴⁴

Social Impacts

The economic impact gives vent to a range of social consequences. The loss of revenue to government leads to reduced income for government to execute capital projects and implement budgets. This definitely leads to greater problems as it results into higher rates of unemployment as companies fold up or relocate. Also, teeming unemployed youths engage in social vices. Many of the armed robbery cases, kidnapping, hostage taking, advanced fee fraud and other vices are easily taken up by youths when the avenues for gainful employment are no more available. Taking the importation of substandard new and used motor vehicle tyres as an example. Many used tyres ⁴⁵ being smuggled and sold in the country are often death traps. ⁴⁶ Many of such tyres are actually not fit for the Nigerian roads. Some of them are winter tyres not adaptable to the tropical climate,

⁴⁴Godwin Anyebe, How fake and substandard products threaten the economy, posted 3/2/2015 https://economicconfidential.com/2015/02/how-fake-substandard-products-threaten-the-economy/accesed 20/08/2020 ⁴⁵ Used or worn tyres are popularly called 'Tokunbo' tyres in the Nigerian parlance meaning from overseas. Drivers patronize Tokunbo tyres far and beyond new tyres because they are cheaper and affordable. A new tyre for a car 165/13 rim costs between thirteen and twenty two thousand naira (№13000 - №22000 between \$36.1 and \$61.1 USD) depending on the make. Whereas a used tyre for the same specification costs between №2500- №5000 (\$6.94 and \$13.8 USD).

⁴⁶ Ipingbenmi O., Socio-Economic Characteristics and Driving Behaviour of Commercial Drivers in Southwestern Nigerian cities, page 6, 7 http://www.codatu.org/wp-content/uploads/Socio-economic-characteristics-and-driving-behaviour-of-commercial-drivers-in-Southwestern-Nigerian-cities-Olusiyi-IPINGBEMI.pdf accessed 3/12/2019

therefore resulting in fatalities. ⁴⁷ According to Ipingbemi, majority of these importations are done by unscrupulous businessmen, ⁴⁸ who cash in on ineffective surveillance of regulatory agencies, weak laws and corrupt practices on the part of law enforcement officials.

Many fire incidents in residential and commercial buildings have been linked to use of substandard electric cables and wires.⁴⁹ The use of substandard electrical cables and wires also cause loss of lives, properties and investment.⁵⁰ The effect of substandard goods to individuals often times is beyond loss of money used in purchasing the good, it could also bring costs in form of treating an injury or harm resulting from consumption of substandard good especially in the food and pharmaceutical sector. Sometimes, loss of lives is an inevitable result of accessing such products and goods. Quite a number of building collapse incidences in Nigeria have been traced to the use of substandard

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⁴⁷ The African Courier,https://www.theafricancourier.de/africa/organisation-calls-for-regulation-of-second-hand-tyres-in-africa-to-reduce-road-accidents/accessed 3/12/2019.

⁴⁸ Ibid

⁴⁹ Addai E.K., Tulashie S.K., Annan Joe-Steve and Yeboah I., Trend of Fire Outbreaks in Ghana and ways to Prevent these Incidents, Safe health Work 2016 Dec; 7(4): 284–292. Published online 2016 Mar

^{9.} doi: 10.1016/j.shaw.2016.02.004 accesed 3/12/2019, Loh Foon Fong, Substandard cables can cause fire in homes, says association, https://www.thestar.com.my/news/nation/2017/02/09/substandard-cables-can-cause-fire-in-homes-says-association accessed 3/12/2019

⁵⁰Inugonum T.A., Power Holding Company of Nigeria, Adverse Effects of Substandard Materials

http://web.vdw.co.za/Portals/15/Documents/Presentations/M3.4ADVERSEE FFECTOFSUBSTANDARDMATERIALS.pdf

construction materials.⁵¹According to S.A. Oloyede et. al,⁵² in their survey of factors aggravating building collapse from the pool of professionals in the building industry, the use of substandard products ranked first among six factors examined by the authors.

Environmental Impacts

The environmental impacts of bringing in substandard products into the country includes disposal. Quite a number of these products have short term value, because they are often not made to specification and disposal becomes the answer to defective product. They are often inadvertently disposed in landfills or burnt, thereby polluting the air, land and water resources. Sometimes when such products are intercepted and confiscated by regulatory agencies, they equally burn them off, ⁵³ thereby aggravating environmental pollution. In the manufacture of genuine products, environmental safety are factored into production, but with the manufacturers of substandard products since infringing on intellectual property, profit making and defrauding unsuspecting consumers is their stock in trade, therefore environmental safety is not a priority.

Impact on Education and Research

Education, research and development are stifled, because the influx of substandard goods make it difficult for the government

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⁵¹ Adebowale Akinyemi Phillips et.al, Building Collapse in Nigeria: Issues and Challenges, Conference of the International Journal of Arts and Sciences, ISSN 1943:6114::09 (01): 99-108 (2016) 105

 ⁵²Oloyede S.A, C.B Omoogun and O.A Adejare, Tackling Causes of Frequent Building Collapse in Nigeria, www.ccsenet.org/jsd,Journal of Sustainable Development, Vol. 3, No.3, Sept. 2010, 131 accessed 17/10/2019
⁵³ https://son.gov.ng/destruction-of-substandard-products-seized-by-son-in-lagosposted 24/5/2017 accessed 20/8/2020

to fund research. These funds are reduced or non existent altogether, because of deprivation of taxes and custom duties that should accrue to government. Also, it has the potential to hamper trade relations and reduce direct foreign investment into the country, as businesses shut down for inability to compete favourably with the substandard products due to reduced prices.

Conclusion

In conclusion, it is noted that the fight against substandard products is not to be taken lightly as the trade in substandard products is a huge loss to the country and the citizens in all ramifications. Therefore, all agencies of government charged with the responsibilities of providing standards and regulating importation of products must be alive to their responsibilities. In order to be able to do this all stakeholders must come together to deliberate on the way forward. In order to achieve the functions of their offices interagency rivalries must be jettisoned for the common interest of salvaging the economy of the country and citizens. Promote interagency collaboration intelligence gathering, data gathering and sharing are very important to reduce the menace of substandard products. The penalties stipulated under a number of the offences are not in tandem with present day realities. The penalties need to be reviewed upward in order to be the deterrent they are intended to be. The courts are tangential in the fight against proliferation of substandard products and the federal high court should engage the services of experts in adjudicating over matters related with substandard products.

There is also need to train and retrain officers in the line of their duties to develop expertise that is up to date. Stakeholders like the Manufacturers Association of Nigeria, Association of Nigerian Licensed Custom Agents, consumer protection groups should continue to sensitise their members and the public at intervals to create awareness on the dangers of importing substandard products on the economy and the populace. The media houses equally have the social responsibility of creating awareness on the dangers of substandard products through the print and electronic media. Nollywood is another explorable avenue to disseminate information on the ills of trading and purchasing substandard products. This can be in collaboration with the National Orientation Agency of Nigeria and the National Broadcasting Corporation.

It is imperative for the customs service to continue to flush out corrupt officers within their rank and file in order to sanitize the agencies for better service delivery. The illegal routes and trade ways should be identified and sealed up. Also, the customs and other agencies concerned should deploy up to date technologies in border patrol and management.

On the part of the government there is a need to create the enabling environment for investors to come in and do business and thrive. Government can also make it a policy that government agencies and parastatals patronize products that comply with the country's standards on goods and services. Also, it is germane that issues of insecurity should be addressed as a matter of urgency in order to attract investments and create enabling environment for local manufacturers to thrive. Problems related to multiple taxation should also be addressed as inflation bites harder on the economy. Electricity is the catalyst to propel the wheel of manufacturing, until the government is able to address the problem of paucity in electricity supply in the country, overcoming substandard products will continue to be a mirage.