

# Conflict of lien laws relating to the sale of abandoned goods carried by multimodal transport in Ethiopia

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**Background:** Inland dry ports in Ethiopia serve as extended destinations for goods transported by sea, especially under the international multimodal transport system, to fulfil customs formalities. Ethiopia's multimodal transport law gives carriers lien rights to detain cargo and documents to recover all sums payable under multimodal contracts. However, the country's customs law gives customs the right to sell abandoned goods by auction and collect duties and taxes before any other payments are made.

**Objectives:** This study critically examines current regulations and practices relating to carriers' lien rights to recover uncollected charges on goods abandoned at inland dry ports.

**Method:** A qualitative case study design is used to analyse the challenges and provide solutions for multimodal transport operators dealing with abandoned goods at inland terminals.

**Results:** A major reason for abandonment is that the proceeds of sales of abandoned goods are insufficient to pay for taxes and logistics expenses. The Ethiopian Shipping and Logistics Services Enterprise has lost an estimated 1.5 million USD annually from abandoned containers in multimodal transport.

**Conclusion:** Based on the legislation and court of appeal precedents presented in this paper, multimodal transport operators' uncollected charges should take priority over tax and duties for the proceeds of selling abandoned goods. As Ethiopia is a landlocked country, it needs to resolve this issue to ameliorate its multimodal transport system.

**Contribution:** This paper suggests revising existing regulations and practices relating to unclaimed goods at inland terminals to recoup logistics costs ahead of tax. This will facilitate multimodal transport services' use of inland terminals as extended destinations of seaports.

**Keywords:** multimodal transport; lien rights; inland terminals; abandoned goods; Ethiopia.

## Introduction

The revised Kyoto Convention (RKC) states that goods entering or departing from a customs territory are subject to tax and duties unless they are collected by another customs authority on behalf of the national authority (WCO 2008). According to Article 2 of the Federal Democratic Republic of Ethiopia (FDRE) Customs Proclamation (2014), any imported goods entering or exported from Ethiopia's customs territory must fulfil all necessary customs formalities, including payment of tax and duties, with the whole country considered as a customs territory. Places designated by customs for enforcing customs laws in Ethiopia include dry ports, which serve as extended destinations for deep sea terminals using multimodal transport systems.

From a customs point of view, goods entering or leaving the customs territory must comply with customs procedures and laws. According to Annex E of the RKC, goods carried under customs transit from the customs office of departure to the destination are not subject to payment of duties and taxes as long as the required securities are submitted. Under Article 16 of Ethiopia's Customs Proclamation (2014), goods can be transported under customs control from an entry customs station to an inland customs station without having to pay customs duties and taxes at the transit seaport.

Ethiopia is a landlocked country in the Horn of Africa, bordered by Kenya, South Sudan, Eritrea, Djibouti, Somalia and Sudan. The Port of Djibouti is the best transit seaport for the country's container shipping (Takele & Tolcha 2021), owing to its geographical location, enhanced port facilities, good liner shipping connectivity and rail transport links. In 2002, the governments of

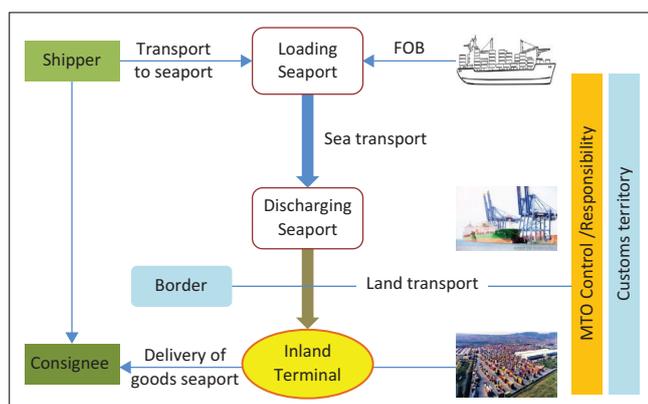
the FDRE and the Republic of Djibouti signed a port utilisation agreement allowing deferral of payments of tax and customs duties on goods originating from or destined for Ethiopia transiting through the port of Djibouti. As a result, goods imported by multimodal transport are under customs control from when they enter the country's customs territory until all customs formalities have been completed and an import release permit has been obtained. Dry ports are considered as extended destinations from seaports, particularly for multimodal cargo. The United Nations' definition of a dry port is an 'inland terminal to which shipping companies issue their own bill of lading for import and export goods, assuming full responsibility for costs and conditions' (Beresford & Dubey 1991). Thus, goods imported to dry ports under a multimodal bill of lading are under the carrier's control or custodianship.

Based on these definitions, goods imported into Ethiopia through a multimodal transport system, especially by sea, and destined for inland dry ports must be under customs control until a release is issued by the commission on fulfilling all customs formalities. In addition, the multimodal transport operator (MTO) is obliged to deliver goods in its custody in good order and condition, as stipulated in the contract of carriage. As a result, there is a kind of joint custody of multimodal goods by customs and MTOs. Figure 1 illustrates a supply chain for imports into Ethiopia using multimodal transport, showing key stakeholders' roles.

## Aim

For containerised products left unclaimed at inland dry ports in Ethiopia, MTOs are unable to collect various service charges from the importers. Although under Ethiopia's multimodal proclamation, the operator has a lien on goods and documents to recover all payments due, the country's customs proclamation complicates this issue by giving customs a priority lien over the carrier's lien.

This study critically analyses current regulations and practices relating to outstanding payments to multimodal transport carriers for goods abandoned at inland terminals. It identifies solutions to the challenges of distributing the



FOB, free on board incoterm; MTO, multimodal transport operator.

**FIGURE 1:** Topography of a multimodal transport chain's imports into Ethiopia.

proceeds of selling abandoned goods to facilitate effective implementation of Ethiopia's multimodal transport system and liberalisation of the sector to local and foreign investors.

## Research methodology

To better understand the difficulties faced by MTOs arising from abandoned maritime goods at inland terminals, a qualitative research methodology was adopted, using a case study approach to enable thorough investigation. Data were gathered from legal documents, court case records and industry reports, which were then analysed and interpreted using content analysis to produce pragmatic solutions.

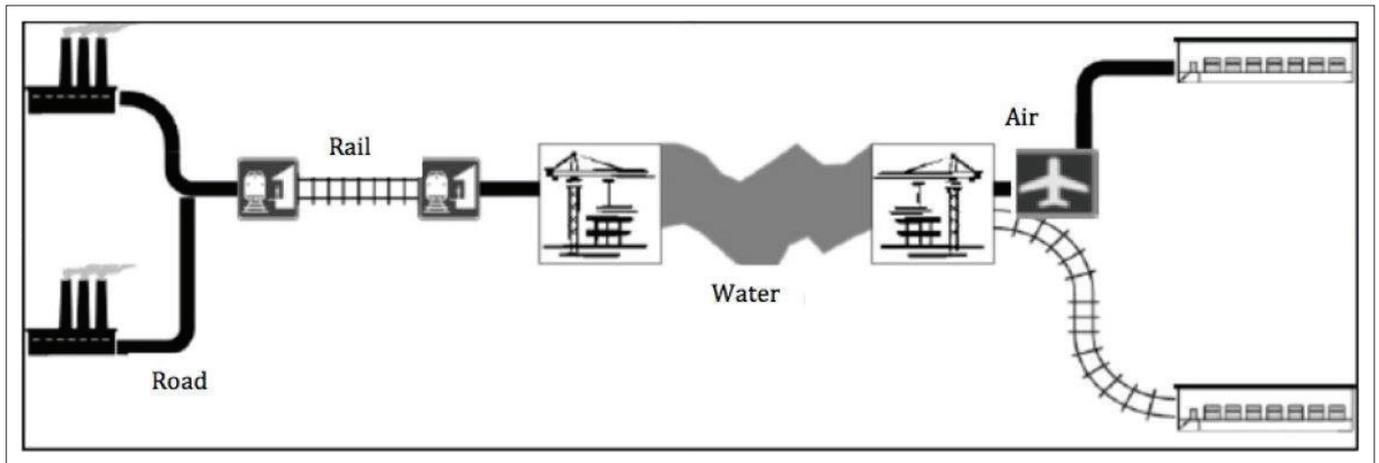
## Literature review

### Multimodal transport

Integrated transport between different modes was formerly constrained by the difficulty of transferring goods from one mode to another. This was solved in the 1960s through the introduction of containers (Taudal Poulsen 2007). Containerisation also permits easier handling at reduced cost (Rodrigue 2020), and intermodal transportation of containerised cargo will continue to grow. Intermodal transportation refers to movements of passengers or freight from origin to destination using a combination of at least two types of transport, including sea, road, or rail, provided by several carriers (Crainic & Kim 2007). Although most freight transport uses two or more modes of transportation, freight flows are interrupted at transport terminals where the freight owner unloads cargo and processes documents. Multimodal transportation overcomes this difficulty by creating a single document that includes all modes of transportation throughout the entire multimodal transport chain (Pencheva et al. 2022). By reducing transport costs and providing door-to-door services, multimodal transport may facilitate countries' economic development (Erceg, Erceg & Kilic 2020). Figure 2 illustrates a multimodal transport chain.

The United Nations Convention on the Carriage of Goods by Sea 1978 (United Nations 1978), known as the Hamburg Rules, did not gain international support, as it was signed by only 28 nations. The UN has since sought to facilitate world trade through a convention on international multimodal transport of goods. Article 1 of this convention describes international multimodal transport as the carriage of goods from a designated place in one country to a place designated for delivery situated in another country using at least two different modes of transport, fulfilling the obligations concluded in the multimodal transport contract (United Nations Conference on Trade and Development [UNCTAD] 1981). The multimodal convention has been ratified by only six nations. This lack of international agreement on multimodal governance necessitates country-level legislation (Damar 2011).

The UN multimodal convention acknowledges every state's right to impose national regulations and controls on MTOs and their activities. In line with the international multimodal



Source: Erceg, A., Erceg, B.Č. & Kilic, Z., 2020, *Multimodal transportation—Economic and legal viewpoint from Croatia and Turkey*, Business Logistics in Modern Management, Osijek

FIGURE 2: Multimodal transportation system.

transport of goods convention, Ethiopia introduced a law entitled 'Multimodal Transport of Goods Proclamation' (FDRE 2007). This covers the essential elements of an international multimodal transport agreement, such as carriage of goods by two or more modes of transport (road, air, rail or sea), the MTO acting as principal, goods crossing at least one country, and the period of responsibility spanning from the time the operator picks up the goods to the time of delivery.

### Dry ports as extended destinations

Although both landlocked and coastal countries can utilise dry ports, in recent decades, a notable logistics trend associated with being landlocked is their rising importance. The term 'dry port' is used interchangeably with 'inland clearance depot' (Beresford & Dubey 1991). The UNCTAD describes a dry port as an inland terminal where shipping companies issue multimodal bills of lading for import and/or export cargo, assuming full responsibility for costs and conditions (UNCTAD 1982).

A dry port is a common-use facility directly connected with a seaport, primarily associated with unitised cargo, offering various services such as cargo handling, customs clearance, consolidation, modal interchange and temporary storage (Beresford & Dubey 1991). Generally, dry ports provide similar services and functions to seaport terminals, except for ship-to-shore transfer (Iannone 2013). Many cargo receivers prefer temporary storage at deep sea terminals for cheaper services rather than facilities. Logistics service providers offer alternative cargo storage services at inland terminals to avoid congestion at seaports. As a result, inland terminals, including dry ports, are considered as *extended gates* to seaport terminals, reducing the time that containers spend at seaport terminals (Rodrigue & Notteboom 2009). Besides reducing congestion at seaports, dry ports directly connected with container seaports ensure large freight volumes to enable efficient rail operations and reduce road congestion (Roso, Woxenius & Lumsden 2009). Customs-licensed dry ports may serve as points of origin or destinations in bills of

lading, where shipping companies assume full responsibility, including for inland transport under customs bonds (Iannone 2013). These concepts and definitions imply that under multimodal transport contracts, shipping lines extend rights and obligations from discharging seaports to inland terminals until goods are delivered to consignees.

### Taxation theory

The term 'taxation' refers to taxes levied on legal entities, including people and businesses, historically in the form of gifts and labour, and now in the form of money (Alm 2011). Almost all governments raise revenues exclusively through taxes to cover the costs of the goods and services they provide to their citizens. Developing nations face the problem of designing effective and equitable tax systems that will raise income without deterring economic activity or encouraging excessive borrowing (Tanzi & Zee 2001). Several authors (Smith 1937) explain the fundamental principles incorporated into the design of tax systems. Alley and Bentley (2005) conclude that five key principles should be taken into consideration when formulating tax policy: horizontal and vertical equity, perceived as fair (equity and fairness); transparency, visibility and simplicity (certainty and simplicity); lower compliance costs (efficiency); increasing economic productivity (neutrality); and collecting the appropriate amount (effectiveness). To adhere to the essential principles of taxation, such as neutrality in connection with this case study, the proceeds from sales of abandoned products should first be used to cover logistics operators' expenses.

A good tax system should be neutral (Barkoczy 2022), meaning that it should not affect taxpayers' decisions or market efficiency. Abandoned products will be subject to tax and customs duty. However, a major cause of abandonment is that the money raised from abandoned goods is insufficient to pay taxes, duties and other expenses (Strahilevitz 2010). Selling abandoned goods without collecting all applicable taxes results in similar products being either fully taxed, not taxed, or taxed to a lesser extent. For instance, some importers abandoned goods in Nigeria's Lagos port with the intention

of repurchasing them from a customs auction at a relatively low price without paying the full duties and costs (Raballand et al. 2012). This practice is contrary to the equity and neutrality principles of taxation because it distorts the market, so governments must devise ways to reduce the negative effects of dispatching abandoned goods to the market without fully collecting taxes.

On the other hand, governments frequently design non-neutral tax systems deliberately to achieve particular policy goals, such as providing tax exemptions to specific investors or using tax expenditure to correct market failure (Barkoczy 2022). Tax expenditure refers to loss of government tax revenues owing to exceptions to the normative tax system, such as exclusions, exemptions, incentives, deductions or preferential tax rates (Swift 2006). The Ethiopian government has been applying tax expenditure to specific industries to attract and expand investment. In the 2020–2021 financial year, its estimated total tax expenditure was ETB 120.7 billion on customs duty, excise duty, VAT on imports and surtax (Finance 2022).

The RKC states that customs laws are applied within the borders of contracting countries. According to the FDRE Customs Proclamation (2014), the entire country of Ethiopia is considered to be a single customs territory. Although all goods entering this territory are subject to customs laws, including payments of tax and duties, these do not apply to goods brought into free zones, such as free trade zones, special economic zones, export processing zones and free ports. Products imported into free zones from outside the country or the domestic market with the goal of manufacturing or processing and subsequently exporting are exempted from import duty and tax, unless they are supplied to the domestic market or consumed within the free zone (Omi 2019). According to the RKC (Annex D, Chapter 2), free zones are situated within a country's customs territory, but for the purposes of just duties and taxes, goods there are regarded as being outside the customs territory. Therefore, although multimodal goods enter the country's customs territory, goods transported by multimodal transport shall be given special rights with respect to tax administration when it is necessary to enforce maritime liens on abandoned cargo at inland dry ports.

## Escheatment theory and lien rights

### Escheatment theory

The power to escheat abandoned property originates in an ancient right of kings to transfer abandoned personal property to the crown if the owner died without heirs (Millar, Heyman & Noel 2018). In modern law, escheat is a process through which the state transfers the title or takes possession of the property to itself, either through escheat or custodial status (Auten 1963). Custodial status allows the state or government to seize abandoned property for the owner's benefit without transferring title to the state or crown, whereas escheat terminates all the owner's rights (Britton 1961). Based on English common law, the crown claims all

forms of property without identified owners according to the *bona vacantia* doctrine (McThenia & Epstein 1983). Under *bona vacantia*, the crown takes ownership of personal property when the owner dies intestate and has no relative to inherit (Peterman 1948). In contrast, under American property law, states generally become merely custodians of abandoned property (Diamond 2010).

Property escheated by or forfeited to the government may ultimately benefit the country. Under forfeiture, the crown may seize the property of convicted persons as part of their punishment (Auten 1963). According to the Customs Proclamation (2014), goods become abandoned when their owners do not claim them within the period prescribed by law. Goods abandoned by their owner are liable for forfeiture by the government, including both custodial and ownership title to abandoned import and export goods. As a result, the approach applied in Ethiopia for abandoned goods management comprises features of transferring custody and ownership (escheat) and the nature of punishment (forfeiture). Similarly, stakeholders in the shipping sector have various concerns about unclaimed cargo.

### Lien rights

Generally, lien refers to a person's right to keep possession of assets or goods owned by someone else pending satisfaction of the possessor's claims against the owner. For instance, a party may have a lien on a ship or cargo in connection with maritime liability (Law 2015). According to Article 4 of the UN International Maritime Organization's convention on maritime liens and mortgages (IMO 1993), state parties have a maritime lien on a vessel's owner or operator for claims that are due, such as seafarers' wages, fatalities or injuries relating to vessel operations, canal dues and port fees. Marine liens are given priority over other claims, such as registered mortgages and similar charges (Article 5), and under Article 11, the state party may enforce its lien right through arrest and forced sale of a vessel.

Ship owners have a lien on all shipped cargo before or after discharge for any agreed amount payable by the charter party, including unpaid charter hire and general average contribution (BIMCO 1999). Carriers may have two types of lien over the goods they transport. A common law lien for goods allows them to refuse to deliver goods until the freight payable on them is paid, while a contractual lien results from the terms and conditions contained in bills of lading (Cecil & Redlich 2015).

## Case description and analysis

### Case description

On 18 November 2006, the governments of the FDRE and the Republic of Djibouti signed an agreement to implement multimodal transport for Ethiopia through the port of Djibouti. This was ratified by Ethiopia's House of People's Representatives, and a comprehensive legal framework for multimodal transport contracts in Ethiopia was introduced

under the Multimodal Transport of Goods Proclamation (FDRE 2007). This recognised multimodal transport as a means to facilitate efficient transit of imported and exported trade goods. Its implementation was accelerated by appointing a single MTO, the Ethiopian Shipping and Logistics Services Enterprise (ESLSE), which was established by Regulation No. 255 (FDRE 2011). The ESLSE held a monopoly over imports into Ethiopia under the multimodal transport system for more than a decade.

Eight dry ports are used as final destinations for multimodal goods in Ethiopia, namely Modjo, Kality, Dire Dawa, Semera, Kombolcha, Mekelle, Gelan, and Woreta. The ESLSE is the developer, owner, and terminal operator of all these dry ports. The volume of containerised cargo imports transported by multimodal transport increased by about 50% between 2014–2015 and 2019–2020, from 114369 TEU to 171848 TEU. The trend in cargo traffic is illustrated in Figure 3. Modjo dry port typically handles almost 80% of multimodal shipments.

Ethiopia's national logistics strategy aims to liberalise multimodal transport services to local and international operators within 5 years (Ministry of Transport & Logistics 2019), and to issue licences to MTOs, first to domestic investors, and then to foreign investors (Ministry of Transport & Logistics 2020). To guide its implementation, the ministry has prepared a detailed directive, the MTOs Commercial Licensing and Competency Certification No. 802/2021.

In multimodal transport contracts for carriage of goods by sea, the MTO is responsible for the entire journey, including carriage of goods from loading seaports to discharging ports such as the port of Djibouti, terminal handling services at the discharging seaport, transport from the discharging seaport to inland dry ports and terminals by road and rail through transit routes prescribed under FDRE Customs directive 117/2016, subject to obtaining a transit permit from the

Ethiopian customs commission, and delivering the goods to consignees or assignees at dry ports. In addition, goods transported using a multimodal transport system are under customs control from an entry customs station to an inland customs station, including dry ports, and until customs issues a release permit on fulfilling applicable customs formalities (FDRE Customs Transit Procedure 2016). To ensure that transit goods arrive at the predetermined customs destinations, Ethiopia's customs commission requires securities of amounts equivalent to duties, taxes and service charges as guarantees (Ethiopian Revenue & Customs Authority 2016). These might be in the form of cash deposits, bank guarantees, insurance bonds or written undertakings by public bodies (Fasil et al. 2017).

Concerning payments of freight charges, fees may be either prepaid or collected by one of three parties: the shipper, the consignee, or a third party such as a transport intermediary. If prepaid, the shipper and/or consignor is obliged to pay the carrier, whereas if the bill of lading is marked 'collect', the consignee is liable for freight charges (Hearn, Simmons & Tauscher 2012). Under Ethiopia's current transport regulations, imported goods are transported under free on board (FOB) incoterms. Based on Incoterm 2020, in FOB terms the shipper is responsible for delivering goods on board a vessel nominated by the buyer (consignee or assignee) at the named port of shipment, and thereafter the buyer bears all costs and risks (International Chamber of Commerce 2020). Under Article 180 of the Maritime Code of Ethiopia, a bill of lading regulates the relationship between a carrier and a holder of the B/L (Proclamation 1960). Although carriers issue bills of lading to shippers, by implication, the consignee is deemed to have the rights and responsibilities in the contract on holding the bill of lading.

Custodianship is a critical issue when imported goods are abandoned. Such goods are those for which the consignee shows no intention of taking delivery or refuses to collect within the agreed period (FIATA 2020). The conditions to be fulfilled and the period required for abandonment vary. In Ethiopia, goods imported by air, sea, or land transport and stored in temporary customs storage, including dry ports, are considered abandoned if the owners do not collect their goods within the period prescribed by law for fulfilling customs formalities (Customs Proclamation 2014). Under the FDRE Customs Proclamation, Article 51, the time period for abandonment used to be 60 days from the date of arrival for goods imported by sea or land transport, and 30 days for goods imported by air. From 2016 to 2019, Modjo dry port, Ethiopia's biggest dry port, had an average container dwell time of 53 days (Assefa, Nuru & Nadeem 2022). Proclamation No. 1160/2019 (Article 13) then amended the abandonment time to 15 days for goods carried by all means of transport. The ESLSE provides notifications of shipments' arrival using a short message service and calls, and customs also notifies importers to ensure timely clearance. Despite these efforts, goods are still abandoned. Among various reasons, cargo is generally abandoned when the transaction cost of transferring the property is higher than the market value (Strahilevitz

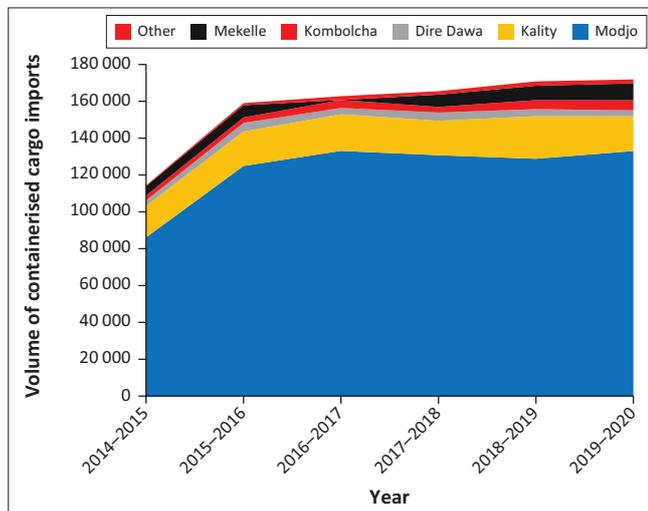
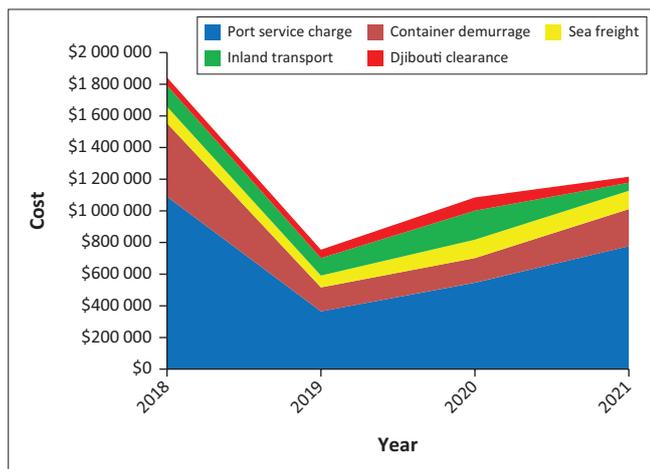


FIGURE 3: Container throughput in full to inland terminals.



**FIGURE 4:** Cost of abandoned multimodal containers at Modjo dry port, 2018–2021.

2010). Goods abandoned by the owner are disposed of by the customs commission by auction or open tender if the goods have a market value, and by other means determined by the customs directive if they have no market value (FDRE Customs Proclamation 2014, Article 61).

Buyers of abandoned goods in Ethiopia receive evidence from the commission to enable transfer of ownership (Article 63). The proceeds of sales of abandoned goods are distributed to stakeholders in the following sequence: tax and duties, expenses incurred by the commission relating to the goods, warehouse fees and transportation expenses and bank interest. The owner of the goods will receive any remaining amount, if claimed within 6 months of the date of sale (FDRE Customs Proclamation, Article 64). This eliminates the MTO's lien right on unpaid invoices, as granted by the FDRE House of People's Representatives under Article 39 of the Multimodal Transport of Goods Proclamation No. 548/2007.

However, proceeds from sales of abandoned goods may be insufficient to cover taxes and duties. Figure 4 illustrates the amounts owed to ESLSE from abandoned imported containerised cargo. From 2018 to 2021, 748 TEU containers were abandoned (168 in 2018, 217 in 2019, 211 in 2020, and 152 in 2021) out of the total containers handled by the MTO (ESLSE) imported through the port of Djibouti and stored at Modjo dry port. The MTO consequently suffered losses of around 4.8m USD in this period at Modjo alone.<sup>1</sup> These costs comprised expenses incurred by the MTO in performing its duties on its own behalf, and payments made to various logistics service providers acting on behalf of the operator, such as terminal operators at the port of Djibouti, freight forwarders, Ethio-Djibouti Railway, freight transport companies, and shipping lines through slot-charter agreements.

Port service charges accounted for 57% of unpaid fees, followed by container demurrage (20%), inland transportation

1.Data reported in Ethiopian birr have been converted using the corresponding year's average annual USD-to-birr exchange rate.

(10%), sea freight (8%) and Djibouti clearance (5%). Port service charges included the costs of a variety of services rendered in the port of Djibouti (totalling 560 USD per TEU),<sup>2</sup> including stevedoring, port dues, ISPS, storage, and forwarding commission, as well as unpaid fees for storage at inland terminals. Between 2018 and 2021, ESLSE suffered an average annual loss of 1.2m USD on account of abandoned containers at Modjo dry port. Given that Modjo dry port was the destination for 80% of multimodal containers, ESLSE lost around 1.5m USD yearly due to abandoned containers in multimodal transport. If no corrective action is taken, these losses will continue to impact significantly on the profits of the current operator and those of new private entrants in future. Therefore, customs must resolve the challenges relating to income distribution from sales of abandoned goods to facilitate multimodal transport using dry ports as extended gateways for seaports.

### Priority right based on Ethiopian Law

For property mortgaged with banks, the creditor bank in Ethiopia has the right to sell the mortgaged property if the debtor fails to pay within the time stipulated in the contract. The sale will be conducted by auction after giving at least 30 days' prior notice to the debtor (FDRE Property Mortgaged with Banks Proclamation No. 97/1998, Article 04). The creditor bank selling the mortgaged property by auction must apply the provisions of Articles 394–449 of the Civil Code (Article 06, Proclamation No. 97/1998). However, under FDRE Labour Proclamation No. 377/2003, any claim by workers arising from their employment relationships have priority over other payments or debts (Article 167).

For example, Abyssinia Bank gives a loan to Tana Transport PLC using different vehicles as a mortgage; however, the debtor fails to make payment as per the contract. As a result, the bank presents an appeal to the court to sell the mortgagee's properties for unpaid debt as per Proclamation No. 97/90, Art. 03, and the bank requests priority right from the sale of property that has been mortgaged per Civil Code (Art. 2857 (1)). However, based on the cassation decision made on 4 April 2009, the bank lost priority-right on the mortgagee asset to the employee's claim arising from the employment contract (Cassation file no. 40921).

The MTO now collects freight and terminal charges from consignees in Ethiopia when goods delivered via multimodal transport arrive at inland dry ports. If contracts of carriage are considered to be similar legal cases to employment contracts, logistical costs should be paid before duties and taxes, corresponding with workers' claims of priority. In this regard, agents have a lien right on the principal's objects until payments are completed (Article 2224). Thus, commission agents who enter into agreements to buy and sell commodities have a lien on all the products of which they are in possession for the amount not paid by the principal (Civil Code of Ethiopia, Article 2247).

According to Ethiopia's Civil Code, if several creditors have registered claims against the same immovable property, the

2.Figure obtained from interview at ESLSE.

sale proceeds must be distributed to creditors in accordance with the mortgage's registration (Article 3059).

Accordingly, the federal Supreme Court of Ethiopia was presented with priority rights on the same immovable property. Two creditors – the Development Bank of Ethiopia on 15 March 1996, and the Commercial Bank of Ethiopia on 30 June 1998 – registered a mortgage on the same property. Ultimately, the court decided the sale of the property, the sum paid to the development bank, and the amount of the refund due to the second creditor, the commercial bank (Federal Supreme Court of Ethiopia, Cassation file no. 25863).

The other key issue is the priority right between tax and credit. In this regard, Article 80(1) of FDRE Income Tax Proclamation No. 286/2002 states that the tax commission in Ethiopia has a preferential claim over all other claims on the assets of a person liable to pay tax. However, claims by secured creditors such as banks have proprietary rights over tax payable (Article 80(1)).

The customs commission is authorised to forfeit goods and equipment used in transporting or storing goods that contravene the customs proclamation and other laws (Customs Proclamation No. 622/2009, Article 91). However, claims by secured creditors such as banks have priority right over customs claims.

Concerning this, in the cassation case presented to the Federal Supreme Court of Ethiopia, between Wegagen Bank and the Ethiopian Revenue and Customs Authority, there was a car registered as a mortgage by the bank in September 2004 for debt given to the owner. In March 2009, police caught the named car carrying contraband goods. Customs opened a case in court to forfeit the car. As a result, the court pleaded the car owner guilty and decided in favour of the customs commission to forfeit the car for contravention of customs law (Proc. No. 91(2)). However, Wegagen Bank appealed to the Federal Supreme Court of Ethiopia, claiming that the car was registered as a mortgage. Finally, on 11 January 2013, the court decided in favour of the Wegagen Bank to collect its debt first based on priority rights. The bank was also ordered to refund the excess amount if the monetary value exceeded the bank claim (Federal Supreme Court of Ethiopia, Cassation file no. 81215).

The MTO is custodian of the goods under its control. As a result, it should have priority right over customs for uncollected expenses under the comparable laws and cassation cases outlined above. Generally, carriers hold a lien right to detain goods and request the sale of goods to meet unpaid charges (FIATA 2020). Under the Maritime Code of Ethiopia, carriers have a lien right to detain cargo for uncollected freight charges at the destination port, and the court may order the sale of these goods according to the Civil Procedure Code (Article 156). In addition, Article 39 of Ethiopia's Multimodal Goods Transport Proclamation No. 548/2007 grants the operator a lien right over goods and documents for all outstanding payments, including freight and storage. Therefore, as carriers have extended liability in multimodal transport because dry ports are considered as extended gateways for seaports, their lien right at seaports should also be enforced at inland dry ports ahead of customs

claims such as tax and duties. For example, in India, any goods imported from abroad that are not cleared within 30 days must be sold at public auction, and the proceeds distributed in the following order (Indian Customs Manual 2023): expenses of sale, freight and other charges to the carrier, duties, charges for the custody of goods, payments to the central government, and finally the owner (*Indian Customs Act 1962*).

## Conclusion and implications

Dry ports are closely associated with the extended gateway concept, facilitating hinterland accessibility and connectivity of seaports through integrated sea-land transport (Iannone 2013). Dry ports are inland terminals in either landlocked or coastal countries (Beresford & Dubey 1991). They serve as import destinations or export origins, extending the sea terminal gate into the hinterland, when accompanied by multimodal transport documents (Veenstra, Zuidwijk & Van Asperen 2012). About 70% of imported containers are carried through multimodal transport into Ethiopia, with the carrier providing multimodal bills of lading under collect arrangements, considering dry ports as delivery destinations. Customs formalities, including payments of tax and duties for multimodal goods, are completed at dry ports. However, owners leave many containers abandoned at inland dry ports, generally when transaction costs are higher than the goods' market value (Strahilevitz 2010).

Under general maritime law, claimants have a priority lien right to detain vessels or cargo until certain demands are fulfilled or sales are completed according to the applicable legal process (Hill 2014). Similarly, the Ethiopian Maritime Code recognises ship owners' lien as a possessory lien if freight is not paid (Article 24), but the court may order the sale of goods up to the amount of the freight claim (Maritime Code 1960, Article 156). In addition, Ethiopia's Multimodal Proclamation No. 548/2007 (Article 39) allows lien rights to MTOs on goods and documents for all payments owed to them. However, customs have the right to forfeit goods abandoned at dry ports in Ethiopia (Customs Proclamation 859, Article 62). The proceeds of sales of abandoned goods are distributed first to pay duties and tax, and then, in turn, expenses incurred by the commission, warehouse and transportation expenses, and bank interest (Article 64). In line with this regulation, tax and duties are currently collected ahead of logistics costs. Priority among lien holders is a critical issue in Ethiopia because the proceeds of abandoned goods may not even cover tax and duties.

Ethiopia has differing laws for similar cases. For example, for properties mortgaged with banks, workers' claims must be paid before secured or ordinary creditors (Proclamation No. 377/2003, Article 167). Secured creditors, such as banks, have priority right over customs' right to forfeit property due to contravention of customs law (Income Tax Proclamation No. 286/2002, Article 80(1)). Based on this legislation and the court of appeal precedents presented in this paper, logistics service providers (MTOs) should be given priority right to

freight and terminal expenses ahead of customs duties and taxes. Multimodal transport connectivity is important for international trade competitiveness, especially for landlocked countries (UNCTAD 2003), and multimodal transport services have statistically significant positive effects on countries' trade flows (APEC 2010). Thus, as a landlocked country, this issue must be resolved in Ethiopia to facilitate multimodal transport systems.

## Future research directions

Inland ports are used as extended destinations for goods transported by multimodal transport, and shipping companies issue combined bills of lading, taking full responsibility for costs and conditions. Further research is needed to address the rights of MTOs, given the extension of their responsibilities to inland terminals.

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