

**SPECIAL ECONOMIC ZONES (SEZs) IN CÔTE D'IVOIRE AND THE
IMPLICATIONS FOR ITS COMMITMENTS UNDER REGIONAL TRADE
AGREEMENTS**

A MINI-DISSERTATION

Submitted in partial fulfilment of the requirement for the
Degree of Master in Law

By

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30 May 2014

Declaration

I declare that this mini-Dissertation which is hereby submitted for the award of Legum Magister (LL.M) in International Trade and Investment Law in Africa at International Development Law Unit, Centre for Human Rights, Faculty of Law University of Pretoria, is my original work and it has not been previously submitted for the award of a degree at this or any other tertiary institution.

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Abstract

This study agrees that the creation of SEZs in Côte d'Ivoire is a good strategy to attract FDI, promote transfer of technology and develop the trade capacity of the country. It has the positive effect of contributing to improve the performance of the domestic industry. Besides, the new industries will create job opportunities and produce a sustainable economic growth.

However, the fact that Côte d'Ivoire is party to RTAs in the sub-region like WAEMU and ECOWAS frameworks reduces the potential export market within the region for the SEZs based companies. In addition, the investors in SEZs could be faced with trade barriers induced by the divergent trade rules under RTAs. That could make the would-be investors reluctant to invest in Côte d'Ivoire, and induce them to choose another country to invest in.

In the light of the need for investors to deal with clear and predictable rules, this investigation argues that the multiplicity of regional and divergent regulations governing goods from SEZs could be source of confusion and concerns, and eventually, it could impact negatively on SEZs programmes implementation in Côte d'Ivoire.

Acknowledgement

First and foremost I am grateful to the almighty GOD for his graces during the time I was preparing to come to the Republic of South Africa and for keeping me sound and safe during my stay.

I would like to take this opportunity to acknowledge my dad and my mum for their prayers and blessings, my sisters and brothers for their support and encouragement, you contributed a lot in motivating me during the course of this programme. I am thankful sincerely to Dr Albert Kacou lecturer at the University Felix Houphouet Boigny Abidjan, Public Prosecutor Ettien Tiemele and Advocate Kobon Asseu for your valuable support and financial assistance in preparing my trip to South Africa.

Many thanks to Absa for providing me with a partial scholarship that helped me take part to this programme. To the Centre for Human Rights at the Faculty of Law, University of Pretoria, I really appreciate this unique opportunity offered to me. Most especially to Prof Frans Viljoen, thank you for having given me the possibility to work at the International Development Unit (IDLU). To the course coordinator, Dr Olufemi Soyaju, from the day I arrived in South Africa and throughout the programme I benefited a lot from your wise advices, direction and support. Thank you for time you took to read through my dissertation and the comment you have made at each step of this work, I'm very grateful.

To my friends Olayiwola Obayan Ayodeji, Abena Ohenewa Danso and Noreen Chenesai Mukora, you people were more than just friends to me; rather we were like brothers and sisters. Thanks a lot for your conviviality, your support, and all the efforts you have made to facilitate my integration and for motivating me during the periods of doubts and support every time I encountered difficulties. Last but not least, to all my class mates: George, Mando, Caleb, Poloko, Kuda, Joshua, Zwelethu, Syphiwe, Tigist, Wonderr, Magalie, Emma, Cynthia, Mutiat, Jacob, I thank you for the nice time we had together and for being patient with me all along the course of the programme.

List of acronyms

ADB	Asian Development Bank
AGOA	African Growth Opportunity Act
ANT	African New Technology
APEXCI	Association pour Promotion des Exportations en Côte d'Ivoire
ASEZ	Aqaba Special Economic Zone
BNETD	Bureau National d'Etudes Technique et de Development
BOO	Build-Own-Operate
BOOT	Build-Own-Operate-Transfer
BOT	Built-Operate-Transfer
CAFTA-DR	Dominican Republic-Central America-United State Free Trade Agreement
CECP	Caisse d'Epargne et des Cheques Postaux
CEPICI	Centre de Promotion des Investissements en Côte d'Ivoire
CMC	Coordination and Monitoring Centre
CNRA	Centre National de Recherche Agronomique
CRTA	Committee on Regional Trade Agreements
CU	Customs Union
EAC	East African Community
EBID	Ecogas Bank for Investment and Development
ECOWAS	Economic Community of the West African States
EPZ	Export Processing Zones

EZ/EC	Empowerment Zones and Enterprise Communities
FDI	Foreign Direct Investment
FTA	Free Trade Area
FTA	Free Trade Agreement
FTZ	Free Trade Zones
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade 1994
GDP	Gross Domestic Product
GSP	General System of Preference
HP	Hewlett Packard
IMT-GT	Indonesia-Malaysia-Thailand Growth Triangle
KEPZA	Karachi Export Processing Zone
LDCs	Least Developed Countries
MFN	Most Favourable Nation
MPTIC	Ministry of Post, Information and Communication Technologies
NDP	National Development Plan
PETROCI	Societe National d'Operation Petroliere de la Côte d'Ivoire
PPP	Public Private Partnership
PTAs	Preferential Trade Arrangements
R&D	Research and Development
REC	Regional Economic Community

RTAs	Regional Trade Agreements
SACU	Southern Africa Customs Union
SEZs	Special Economic Zones
SIR	Societe Ivoirienne de Raffinage
SOTRA	Societe des Transports Abidjanais
SSA	Sub-Saharan Africa
TAFTA	Trans-Atlantic Free Trade Area
TFTA	Tripartite Free Trade Area
TNCs	Transnational Corporations
VITIB.SA	Village des Technologies de l'Information et de la Biotechnologie
WADB	West African Development Bank
WAEMU	West African Economic and Monetary Union
WTO	World Trade Organisation
ZBTIC	Zone de la Biotechnologie et des Technologies de l' Information et de la Communication

List of treaties and Instruments

ECOWAS Treaty 1993

General Agreement on tariff in Trade 1994 (GATT)

General Agreement on Trade in Services (GATS)

Revised Kyoto Convention

WAEMU Treaty

Protocol on the establishment of the EAC customs union

ECOWAS protocol A/p1/1/03 of 31 January 2003

EAC customs union (Exports Processing Zones) regulations

Acte additionnel no.04/96 instituant un regime tarifaire preferential transitoire des echanges au sein de l'UEMOA et son mode de financement

Protocole additionnel no.III/2001 of 19 December 2001, instituant les regles d'origine des produits de l'UEMOA

Protocole additionnel no. I/ 2009/ CCEG/ UEMOA

The East African Community Customs Union (rules of origin) rules

Decree no 2004-367 of 15 July 2004 by the President of the Republic of Côte d'Ivoire

Decree no 2004-471 of 9 September 2004 by the President of the Republic of Côte d'Ivoire

Inter-ministerial Order no 245/MPTIC/MEF of 10 August 2012 re-organising the institutional framework of the ZBTIC

Act no 2004-429 establishing the free zone regime of biotechnology and information and communication technologies in Côte d' Ivoire

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Chapter 1

Introduction

1. Background

For more than a decade now, the trend in terms of trade on the African continent is related to two major phenomena.¹ On one hand, the African countries have endeavoured to strengthen regional economic integration so as to interconnect their economies and stimulate the development of domestic industries by creating large markets and lowering the trade barriers among themselves.² This move toward more deepened economic and commercial ties between African countries is organised in the framework of various regional trade agreements (RTAs).³ On the other hand, there is a noticeable more and less successful attempts by a great number of African countries to develop and implement diverse forms of special economic zones (SEZs) programmes.⁴ These SEZs are individual strategies chosen by countries on the continent as means to attract foreign direct investment (FDI), solve domestic unemployment problems, increase the industrial processing capacity at the national level, produce manufactured goods for export and create a sustained economic growth.⁵

As one of the strongest economies in Sub-Saharan Africa (SSA), Côte d'Ivoire is one of those countries which are parties to different RTAs, and also involved in the development of SEZs. Côte d'Ivoire is located in West Africa; its territory covers an area of 322,462 square kilometres and the population of the country was estimated to be around 20.8 million in 2008.⁶ Ranked among the developing economies in 2010, the per capita gross domestic product (GDP) was US\$1 048.6 and the poverty index stood at 48.9% per cent.⁷ So far, the economy of Côte d'Ivoire is based on exports in agricultural commodities, with a focus on cocoa and coffee.⁸ Actually, Côte d'Ivoire is the top exporter of cocoa beans and the sixth exporter of coffee beans

¹ Woolfrey *Special Economic Zones and regional integration in Africa*, 2013 1.

² As above.

³ Woolfrey (n 1 above).

⁴ Woolfrey (n 1 above).

⁵ Woolfrey (n 1 above).

⁶ World trade organisation, *trade policy review body on Côte d'Ivoire*, wt/tpr/g/266, 25 may 2012 7.

⁷ As above.

⁸ n 6 above.

in the world.⁹ In 2010, the contribution of the different economic sectors to the GDP in terms of shares was estimated at 28.7% for the primary sector, the secondary sector was estimated at 21.3% and 36.8% for the tertiary sector.¹⁰

Since 1960, year of its independence, Côte d'Ivoire made the choice of economic liberalism, promotion of private initiative and openness to the world as the basement of its economic development¹¹ with a clear focus on industrialisation.¹² Indeed, the industrial base of the economic development grew rapidly from 1960 to 1980, encountered a slowdown from 1980 to 1994, followed by a sustained recovery after the devaluation of the CFA franc¹³ in January 1994.¹⁴ However, the socio-political crisis that lasted from the end of 1999 worsened at the beginning September 2002, plunged the country into a severe recession.¹⁵ The results of the war were destruction and closure of lots of businesses as well as relocation of many companies.¹⁶

Since 2011, after 10 years of crisis, the presidential elections laid the ground for a bright future for the national economy.¹⁷ Indeed, the Ivorian economy experienced a very fast recovery, sustained by high capital spending in construction projects, transport infrastructure and oil exploration, in addition to a quite remarkable amelioration in general security.¹⁸ Recently, Côte d'Ivoire undertook a vast programme of reform in the key sectors of the economy and even established a roadmap as the framework for its development initiatives: the 2012-2015 national development plan (NDP).¹⁹ The government initiated an economic and financial programme with a focus on investment promotion in such a way to realise strong and sustained economic growth, create jobs and combat poverty.²⁰ The combined effects of the successful economic

⁹ n 6 above.

¹⁰ n 6 above.

¹¹ n 6 above.

¹² Al Ahoure & A Tano, *bilan diagnostique de l'industrie ivoirienne* 2009 1.

¹³ Currency used in Cote d'Ivoire.

¹⁴ Ahoure & Tano (n 12 above).

¹⁵ Ahoure & Tano (n 12 above).

¹⁶ Ahoure & Tano (n 12 above).

¹⁷ n 6 above.

¹⁸ M Siddiqi, restoring Côte d'Ivoire status as the sub-region's development hub,

<http://www.bcafrica.co.uk/news/510-restoring-cote-divoire-status-as-the-sub-regions-development-hub>

(accessed 9 Mars 2014).

¹⁹ n 6 above, 12.

²⁰ n 6 above, 12.

reforms and the full implementation of the NDP should propel Côte d'Ivoire into the ranks of the emerging countries by 2020.²¹

To achieve the ambitious objective of making the country an emerging economy, the government through the Ministry of Industry has set up plans for a new industrialisation strategy as well with the objectives to revitalise the sector and increase the processing capacities of the country.²² One of the priorities of the new industrialisation strategy is the development of SEZs in Côte d'Ivoire.²³ There is already a SEZ in the country: the Grand-Bassam Free Zone for Information and Communication Technologies and Biotechnology.²⁴ Designed to create jobs, attract FDI, encourage technology transfer, promote development of efficient industry and exports in Côte d'Ivoire, the Grand-Bassam Free Zone was created in 2004 and so far is the only one in Côte d'Ivoire.²⁵ According to the Ministry of Industry many other SEZs will be created with the overall objective of realising the industrialisation of the country in the nearest future.²⁶ The short term aspiration of the government is to achieve a level of processing of 50% of raw materials produced in Côte d'Ivoire by 2020.²⁷

The new SEZs programmes if well implemented should increase consistently the trade capacities of Côte d'Ivoire as it is the case in countries such as China, Mexico, Mauritius, where it has produced rapid economic growth and significant industrialisation. However, as far as trade is concerned, there are governing rules which every country has to respect at the regional level as well as at the international level when implanting its trade policy. In fact, with regard to RTAs that gather neighbouring countries, Côte d'Ivoire is party to the Economic Community of the West African states (ECOWAS) and the West African economic and monetary union (WAEMU).²⁸ These RTAs with the purpose of deepening the trade relation between member countries and protect the local industries established preferential schemes within the framework of the rules of origin. Generally, the rules of origin contain provisions that cover the goods

²¹ n 6 above, 28.

²² *'Plan National de Développement 2012-2015; Tome IV: matrices d'actions prioritaires; projets prioritaires du Ministère d'Etat, Ministère de l'Industrie et des Mines, République de Côte d'Ivoire'* 92.

²³ As above.

²⁴ n 6 above, 19.

²⁵ n 6 above, 19.

²⁶ n 22 above.

²⁷ n 22 above.

²⁸ n 6 above 13.

produced in SEZs. In the case of WAEMU and ECOWAS, the provisions that deal with the goods from SEZs are different and contradictory on the point related to a potential market access for zone based firms. Thus, when implementing SEZs in Côte d'Ivoire, both government and investors must be aware of the provision of the RTAs the country is party to with respect to such programmes.

1.2 Research problem

SEZs programmes depend for their implementation on the application of special rules that differ from those applicable in the rest of the economy of the host country and particular objectives to be reached to satisfy investors and governments. It is recognised that governments use lots of incentives to attract investors as well as diverse forms of support measures to make the SEZs successful and impulse greater economic growth to buttress the realisation of the country's economic goals.

Meanwhile, the investors who come into the country's SEZs are not only interested in the profits from the exports of their manufactured goods into the global market. But they are also interested in selling in the domestic market and even at the regional as well. The trend nowadays is for investors to use the strategic positioning in the host country to target the sub-regional market and make their investment more profitable.

The research problem this study seeks to solve is that Côte d'Ivoire is party to two different RTAs such as WAEMU and ECOWAS that encompass the whole sub-region and govern trade in West Africa, and both RTAs provide for specific regulations with respect to the trade of the goods from SEZs on the regional market. While WAEMU is opened to the possibility for goods from SEZs in Côte d'Ivoire to be regarded as originating from the union, ECOWAS is more stringent, ECOWAS is more stringent. That ECOWAS provisions make it clear that goods from SEZs would strictly not qualify as originating from the community. This double membership of Côte d'Ivoire of RTAs that provide for divergent rules governing the goods from SEZs raise issues about which rules companies based in SEZs should follow; and then, for the investors interested to set up plants in SEZs, there is a confusion about the extent to which their goods should have access to the domestic and regional market as originating products or not.

So, taking into account the need for investors to deal with clear and predictable rules that apply to the type of investments they are interested in, the multiplicity of regional regulations governing goods from SEZs could be source of confusion and concerns. Eventually it could impact negatively on SEZs programmes implementation in Côte d'Ivoire.

1.3 Research questions

This research seeks to answer the following questions:

1. What are the contents and the concept of SEZs?
2. What is the approach of SEZs in Côte d'Ivoire and the legal rules governing their implementation in the country?
3. How do WAEMU and ECOWAS deal with SEZs and what are the potential impacts of their provisions on the Zones especially in Côte d'Ivoire?
4. What lessons Côte d'Ivoire can learn from the practices in the implementation of SEZs programmes in East African Community (EAC) and the Growth triangle in Asia?

1.4 Thesis statement

This study agrees that the creation of SEZs in Côte d'Ivoire is a good strategy to attract FDI, promote transfer of technology and develop the trade capacity of the country. It has the positive effect of contributing to improve the performance of the domestic industry. Besides, the new industries will create job opportunities and produce a sustainable economic growth.

However, the fact that Côte d'Ivoire is party to RTAs in the sub-region like WAEMU and ECOWAS frameworks reduces the potential export market within the region for the SEZs based companies. In addition, the investors in SEZs could be faced with trade barriers induced by the divergent trade rules under RTAs. That could make them reluctant to invest in Côte d'Ivoire, and rather induce them to choose another country to invest in.

Therefore there is a need for unification and harmonisation at the regional level of the regulatory framework which governs SEZs in a different way from the too stringent rules applied now. In

fact, SEZs and RTAs should be used as tools to support industrialisation so as to create sustainable economic growth within the whole region Côte d'Ivoire is party to.

1.5 Significance of the study

SEZs developed under different forms have got a momentum across Africa. This analysis is based on the case study of Côte d'Ivoire and will address issues with respect to the interface between RTAs and SEZs. This is an important subject, especially in the context of West Africa where two RTAs coexist.

Few years after the establishments of the first SEZs in the region, the authorities of the member-countries of main RTAs in the region, WAEMU and ECOWAS, introduced very stringent provisions to control the activities of SEZs programmes and the movements of goods from SEZs. Whether it is recognised that WAEMU and ECOWAS co-exist without major issues, there is a lack of co-ordination in their respective provision with regard to goods from SEZs. There is a high risk for the rules with respect to products from SEZs contained in the RTAs to be applied in a wrong way and that will lead to the failure of these programmes that create wealth and development in the other parts of the world.

Other countries in the same region and even across the continent which are implementing SEZs programmes or plan to do so may also be interested in the findings of this study. It is important to note that all the RTAs share the same objectives which are to facilitate trade between member countries and support further economic integration. In Africa the content of the RTAs take into account the specificity of the economies and are almost similar, and besides these countries experience challenges when it comes to the compliance with the agreements and their national trade policies.

The findings of this research paper aim to enrich the studies that are already been done on similar subjects, and it is a contribution policy-makers can avail themselves of. Besides, it would serve as reference for scholars and researchers interested in further investigations on the same topic.

1.6 Literature review

Researchers and authors who published works on the relation between SEZs and RTAs are in most cases from western countries, nevertheless contribution from Africa do exist on the matter,

in forms of research papers from Southern Africa institutes. This study will therefore be one of the most recent contributions with an African perspective on the matter which takes into account the specific context of Côte d'Ivoire in West Africa. Although the studies done before this one cover the case of a single RTA that apply to SEZs in the whole region, the particularity of this study is the fact that it is the first of the kind to address the case of a country party to two RTAs that provide for totally divergent rules with respect to goods from SEZs.

In the process of this review, different aspects of the related literature about the topic are covered. In the first place, the literature examines the concepts of SEZs and RTAs. It introduces the different approaches of defining these concepts. Secondly, the literature weighs the rationale for the utilisation of SEZs and RTAs. It seeks to understand why countries choose to set up SEZs and at the same time enter into RTAs. Thirdly, this review considers the studies about the relationship between SEZs and RTAs; it highlights the issues that arise when a country establishes SEZs and must ensure compliance with its commitment under RTAs. Fourthly, studies that show successful approaches in combining SEZs and RTAs are considered in this review. This last part examines the ways the combination operates and draws potential lessons for the purpose of recommendations.

In '*Implications of WTO disciplines for special economic zones in developing Countries*', Greskoff and Walkenhorst mention that *special economic zones are geographically delineated economic areas in the form of export processing zones, special industrial zones, or free trade zones.*²⁹ This definition based on the technical features of SEZs reveals one of their main characteristic, in the sense that SEZs are always located inside a specific geographical space, meanwhile this definition misses to give an indication on the size of the SEZs. In addition the different forms of SEZs that serve as illustrations do include not the new types of zones. It must be noted that SEZs do exist across the world and are operated in many developing countries.³⁰ There are some instances where SEZs are designated under local name like 'maquiladoras' in

²⁹ S Creskoff & P Walkenhorst, 'Implications of WTO disciplines for special economic zones in developing Countries', 2009 7.

³⁰ As Above

Mexico.³¹ In fact, the literature applied to designate the zones could create confusion but remains interchangeable.³² On the other side, RTAs appear to be actions by governments to liberalise or facilitate trade on a regional basis, sometimes through free trade areas or customs unions according to the dictionary of trade policy terms.³³ Yes indeed, the objective of RTAs is to liberalise or facilitate trade, but a look at the way it is done suggests that RTAs go beyond an action by a government rather it is a strong commitment.

From their definitions, SEZs and RTAs are both economic instruments that have their own specificity. RTAs are based on an agreement between governments of the member countries; they put in relation government agencies and even involve international organisations, and they follow a more and less political agenda. While SEZs are individual economic measures of a country which involve private sector; it create a relation between a government interested in developing its economy and investors looking for opportunities with the objective to make maximum profits.

What are the rationale for countries in using SEZs and RTAs? Many studies show that despite the fact that SEZs and RTAs are different types of economic initiatives; they serve as social, economic and development tools. Sargent and Matthews are among those who share that view; in '*combining Export Processing Zone and Regional Free Trade Agreement*' they emphasise the fact RTAs and SEZs contribute together to economic development and argue that developing countries utilise both as means to create wealth.³⁴ In their opinion, by lowering trade barriers between member countries RTAs create more trade within the region and contribute in such a way to trade liberalisation.³⁵ There is no doubt about RTAs being a mean for trade liberalisation, meanwhile speaking about the creation of more trade between member countries, the experience of the African countries shows that this is not always guarantee. In fact, there is great number of RTAs already in force in Africa; still it is noticeable that the volume of trade between African countries has not increased at all.

³¹ J Sargent & L Matthews, 'Combining export processing zones and regional free trade agreements: Lessons from the Mexican experience', 2001, 1739.

³² N Farid, 'Towards best practice guidelines for the development of economic zones', 2009.

³³ WTO, www.wto.org/english/tratop_e/region_e/scope_rta_e.htm (accessed 11 Mars 2014).

³⁴ J Sargent & L Matthews (n 31 above)

³⁵ WTO (n 33 above).

Engman et al in *'Export Processing Zones: Past and Future Role in Trade and Development'* share this economic development and trade facilitation perspective for SEZs as well. They emphasise that SEZs serve as laboratories for new industrial development policies. As such this study agrees that SEZs help to increase the processing capacities of the host country and they have the effect to influence positively the export oriented growth. It also agrees that massive investments in new industrial plants and transfer of high technology help the host country to increase its processing capacities and diversify its exports in terms of value added goods.³⁶ But this study observes that SEZs as stand-alone programmes cannot induce an industrialisation of the host country if they are not connected to the domestic industries. Countries like China that have realised rapid industrialisation have integrated SEZs in a national industrialisation strategy and have established the enabling environment for their success.

Stein is also among those authors who say SEZs contribute to trade facilitation, in *'Africa, Industrial Policy and Export Processing Zones: Lessons from Asia'* he argues that the proliferation of free trade and export processing zones (EPZ) has hugely contributed to increase international integration of the economies of developing countries.³⁷ Although it is recognised that a great number of developing countries still benefit a lot from SEZs in terms of rapid economic growth and increasing share in the global trade, this study shows that the investors in SEZs in Africa are most of the time interested in the domestic and regional market and they even ask for the advantages granted to domestic industries in term trade facilitation schemes provided in the RTAs.

Another element in the relationship between RTAs and SEZs as mentioned by some author is the fact SEZs play an important role in the reduction of poverty; Torres point out the fact SEZs create lot of employment opportunities and by doing so generate income for the population of the host country.³⁸ But Stein has some reservation on this aspect saying that unlike their Asian counterparts SEZs in Africa create few jobs.³⁹ The reality about employment creation by SEZs is that it occurs only in the case of successful programmes, except in Mauritius and in some extent

³⁶ R Torres, 'Free Zones and the WTO Agreement on Subsidies and Countervailing Measures' 2012

³⁷ H Stein, 'Africa, Industrial Policy and Export Processing Zones: Lessons from Asia' 2009

³⁸ Torres (n 36 above).

³⁹ Torres (n 36 above).

in Kenya African do not create a great number of employments. And even in the situations of other developing countries where they create a great number of jobs the employees work in bad conditions and the amount of the wages is very low in these countries.

This research converges with the observations of the authors above, in the sense that it acknowledges that developing countries use RTAs and SEZs for social, economic and development purpose. Nevertheless based on the fact many SEZs and RTAs have failed to deliver the expected results, the study emphasises that the arguments of those author in the context of Africa appear to be insufficient in the explanation of the reason of these failure.

What is the relationship between SEZs and RTAs? Many studies show that pursuing regional economic initiatives in the framework of RTAs and establishing innovative domestic trade and economic development policies with SEZs is difficult to balance in the context of developing countries.

According to Sargant and Matthews the reasons lay in the different economic logics that govern both instruments.⁴⁰ In their view, RTAs reduce or eliminate trade barriers to encourage intra trade between member countries and support development of competitive local industries.⁴¹ While SEZs are used by foreign companies as a mean to import production inputs duty free from other part of the world so as to avoid duties and tax on their non-regional input.⁴²

The fact SEZs and RTAs have different economic logics is real and the study acknowledges that. Meanwhile, it discusses the argument about the imports of inputs duties and taxes free in SEZs being source of conflict and sustain that the provisions that allow sells of goods from SEZs within the RTAs are among the main source of conflict with RTAs. Because as long as SEZs are fully exports oriented and target the global market, there are no potential problems with both instruments.

⁴⁰ WTO (n 33 above).

⁴¹ As above.

⁴² WTO (n 33 above).

In *'Special Economic Zones in Africa: Comparing performance and learning from global experience'*, Farole points out the issue with the incentives used by countries to attract investors in SEZs, saying that in such a situation the use of incentives can end up in a race to the bottom between member countries of RTAs that develop SEZs programmes on their territories.⁴³

On the same aspect, Woolfrey in *'Special Economic Zones and Regional Integration in Africa'* highlights the fact that in the objectives to attract more investors than its neighbours, a country can use incentive packages that can create economic tensions with the other members of the RTAs it is party to.⁴⁴ This study recognises with the authors that SEZs are incentives based programmes, everywhere in the world countries that host SEZs grant different types of incentives depending on their comparative and competitive advantages. These authors miss the aspect on African countries that most of the time lack the potential to attract FDI, and do not plan their SEZs programmes outcome on a long term basis, those are the ones that use more and less high level of market access and even subsidise their zones to attract and maintain investors; these kinds of incentives are even prohibited even under the multilateral trading system. In such situations SEZs can hinder the integration process in the region and the idea of creating a larger regional market in such a way to stimulate investment at the regional level for the benefits of all the member countries will fall apart.⁴⁵ Besides the economic tensions between member countries of RTAs, Woolfrey goes even further to identify other sources of problems in the relation RTAs and SEZs. According to him, when it comes to types of RTAs like free trade agreement (FTA) or customs union (CU) member country that grant *'...duties drawbacks on inputs offered as part of the incentive packages for manufacturer situated in these zones; preferential rules of origin relating to goods produced in the SEZs; and whether or not such goods can be sold in domestic and regional markets'* can create serious problems with regard to RTAs it is party to.⁴⁶ To ensure that these kinds of incentives do not threaten the economic integration process, RTAs contain provision that serve as protection for all the member countries.

⁴³ T Farole, *Special Economic Zones in Africa: Comparing performance and learning from global experience*, 2011 174.

⁴⁴ Woolfrey (n 1 above) 15.

⁴⁵ Woolfrey (n 1 above) 15.

⁴⁶ Woolfrey (n 1 above) 16.

Engman et al argue that these provisions sometimes restrict or limit the extension of the trade preference with respect to the goods from the SEZs.⁴⁷ Indeed, some RTAs just ban goods from SEZs benefiting from duty and tax free on imports to access the regional market on preferential schemes; while other establish very stringent criteria that allow market access contained in rules of origin.⁴⁸ Unfortunately the fact RTAs contain stringent rules that apply to SEZs can have negative influence on the competitiveness of the SEZs based firms when they are interested in the regional market as well.⁴⁹

Sargant & Matthews point out the fact that in case the incentives expected are substantially reduced for example in terms of market access, the SEZs based firms will immediately reduce their investments or choose to relocate in a country where they can get better incentives.⁵⁰ The authors here above argue that RTAs provide for stringent rules that impact negatively the performance of the SEZs and the attractiveness of the host country in term of FDI. Meanwhile the reason why RTAs are establish is to offer a larger market to domestic industries, they need to protect them against unfair competition from SEZs based firm which are deemed to be outside the customs territory and which also enjoy lots of incentives.

What are the approach to solve the difficult coexistence between SEZs and RTAs? Recent publications have covered the difficult coexistence between SEZs and RTAs and have even suggested some solution. About that, Woolfrey has the thinking that there is possibility for developing countries especially in Africa to efficiently balance regional integration and development of successful SEZs.⁵¹ Taking example on EAC he argues that harmonisation of SEZs programmes in the framework of the RTA is the best approach.⁵²

Koyama in 'SEZs in the context of regional integration: Creating synergies for trade and investment' in T Farole et al *Special economic zones: Progress, emerging challenges and future directions* shares the same idea and even argues that the combination of SEZs and RTAs has a

⁴⁷ M Engman et al (2007), 'Export Processing Zones: Past and Future Role in Trade and Development', 50. <http://dx.doi.org/10.1787/035168776831> (accessed 11 May 2014).

⁴⁸ WTO (n 33 above) 1741.

⁴⁹ Woolfrey (n 1 above) 16.

⁵⁰ WTO (n 33 above) 1743.

⁵¹ Woolfrey (n 1 above) 17.

⁵² Woolfrey (n 1 above) 17.

significant positive impact on trade and investment within the region.⁵³ He takes example of the growth triangles in East Asia to support his argument, saying RTAs can help to enable a good business environment for SEZs by the provision of regional infrastructure network in forms of corridor to interconnect the economies of the member countries. This research agrees with both authors here above on the point about the possibility for a harmonisation of SEZs policies in the framework of the RTAs. But then, it will depart from their approach since the case studies they draw their conclusions from take into account the situation in which countries are involved in more and less advanced SEZs programmes which have to comply with the provision a single RTA. In addition, the harmonisation perspective as they describe it does not take into account the establishment of a regional industrial policy to link together the evolution of SEZs programmes with the development of local industries. In fact, this investigation will address the implication on the SEZs programmes for a country which is party to two different types of RTAs. Further, it looks at the possibility to unify the provision that deal with goods from SEZs in both RTAs. It suggests an approach for the successful harmonisation of SEZs programmes in the framework of the largest RTA within the region. Then examine how SEZs programmes should be integrated in a regional industrial policy to create a regional chain value and increase the competitiveness of the local industries so as to create a sustainable growth that the sub-region will really benefit.

1.7 Methodology

This study will be desktop and library-based in that it will use text books, articles and journals, published and unpublished papers in the quest for material covering the topic. And the approach will be descriptive, analytic, comparative and prescriptive as well. In the first place, the descriptive process will serve to introduce the concept of SEZs and to show in detail how it works. Second, the analytical approach will be used to examine the compatibility and interaction of SEZs in Côte d'Ivoire in respect to the RTAs the country is party to. Third, the comparative method will serve to describe two different and successful examples of combination SEZs-RTAs. And then fourth, the prescriptive approach will be applied for policy recommendations.

⁵³ T Farole et al, *Special Economic Zones: Progress, Emerging Challenges, and Future Direction 2011* 127.

Then, this study will also involve analysis of legal provisions, hence texts of national laws, regional regulations and treaties as well as other international rules of law will be used in the course of the investigation.

1.8 Limitation of the study

This research is not an attempt to evaluate the social and economic performance of SEZs in Côte d'Ivoire, rather it is an investigation about the potential problems and opportunities for a country implementing SEZs in a region covered simultaneously by two different RTAs. The study takes only into account the context of RTAs between developing countries located in the same geographical area. It emphasises the issues a government may encounter when it tries to balance internal trade policies and compliances with its commitments under RTAs.

1.9 Outline of Chapters

This study consists of five chapters outlined as follow. The chapter 1 introduces the study, outlines the background to the study, the research problem, research questions, thesis statement, justification of the study, literature review and the methodology. Chapter 2 explains the concept and the content of SEZs and the idea behind their creation. It examines SEZs, their characteristics and features. It also unpacks the reason why the governments develop this kind of programme and their impact on the trade performance of the country. Chapter 3 introduces the approach to SEZs programme in Côte d'Ivoire and the undergirding legal framework. It explores the type of zones developed in Côte d'Ivoire, the rationale behind such programmes as well as the expected benefits the country intends to gain from successful implementation. It also covers the legislation that undergirds the zones and their activities in the country. Chapter 4 covers the interface between WAEMU and ECOWAS with SEZ. It examines the trade-related provisions in WAEMU and ECOWAS especially with respect to SEZs in these RTAs and the possible on the development of SEZs. Chapter 5 assesses the lessons drawn from the best practices in harmonising RTAs and SEZs policy in EAC and East Asia. This chapter discusses the successful example of interface between RTAs and SEZs across the continent and even the world. It focuses on the RTAs that successfully balanced regional trade policies and SEZs programmes. These examples of best practice will serve as strong basis to draw some lessons and make recommendations.

Chapter 2

The concept of special economic zones (SEZs)

2.1 Introduction

In Chapter 1, this study introduced the background and the issue it sought to investigate. It outlined the approaches under which the analysis will be conducted and the opinion to be developed in the course of this research. The Chapter unpacked the motivations behind this study and did an overview the different perspectives about the relationship SEZ-RTAs, then highlighted the methods used in the course of this before drawing the limit of this paper.

Even though the recent evolutions and permanent innovations in the implementation of SEZs may suggest that it's a brand new economic trend; the history shows that diverse forms of safe and secured commercial premises were established on the main trade routes and ports across the world to serve for storage as well as trading of goods.⁵⁴ Inside these commercial premises the local rules related to prohibitions, tax and duties collection, and other types of levies were not applicable.⁵⁵ By way of example some of these kinds were established in the early 16th century in Gibraltar in 1704 and Singapore in 1819.⁵⁶ The first zone of the modern age that included activities of processing goods for the purpose of export was the Shannon export processing zone (EPZ) in Ireland.⁵⁷

Speaking about SEZs, the annex D of the revised Kyoto convention describes them as parts of the territory in the country where imported goods and products are introduced duty and tax free, because these areas are regarded as being outside the customs territory of that country.⁵⁸

SEZs is a term used as common denomination for different types of economic programmes whose characteristics and features can vary depending on the kind of activities they accommodate.⁵⁹ SEZs are especially delimited and fenced-in geographical spaces within an

⁵⁴ T Farole, *Special Economic Zones in Africa, comparing performance and learning from global experience* 2011 31.

⁵⁵ As above.

⁵⁶ FIAS, *Special economic zones, performance, lessons learned, and implications for zones development*, 2008, 9.

⁵⁷ Farole (n 54 above) 32.

⁵⁸ n 29 above.

⁵⁹ FIAS (n 56 above) 9.

economy where the rules with respect to the administration, regulation, and fiscal regime are totally different from the ones normally applied to the rest of the economy.⁶⁰ Indeed inside the zones, the rules governing the activities of the stakeholders have the characteristics to be very liberal.⁶¹ In fact, SEZs have their own regulatory framework which provide for the rules that cover investments conditions, trade and customs, as well as taxation.⁶² The application of different rules inside the zones from the ones in the domestic territory is informed by the need to enable a favourable business environment and to offer an efficient administration system to the targeted investors and firms.⁶³

Since the 70s, with the development of the first modern zones, the number of SEZs and their performance in terms of investments, employment and wealth creation is still growing up to now. Indeed in the 1970s, there were 80 zones across the world; operated exactly in 30 countries.⁶⁴ In terms of exports they generated \$6 billion and were source of direct employment for 1 million workers, all these zones were public owned and operated SEZs.⁶⁵ In 2014, the number of SEZ is estimated to 2000, operated in more than 116 countries; that total does not take into account the number of single factory zones.⁶⁶ Up to 1200 of these zones are privately owned by private developers; they created 50 billion direct employments for more than 30 in China alone and generated more than \$180 billion exports.⁶⁷

From the modern age to now SEZs have really evolved; many criteria like seize and geographic position, the kind of activities that take place inside the zones and the type of technologies used for the purpose are determinant to do an effective classification.

2.2 Classification of Special Economic Zones

SEZs are operated through diverse forms. They come in variants as Free Trade Zones (FTZ), Export Processing Zones (EPZ), Free ports, Enterprise Zone, Single factory EPZ.⁶⁸ Depending

⁶⁰ FIAS (n 56 above) 9.

⁶¹ Farole (n 54 above) 17.

⁶² Farole (n 54 above) 23.

⁶³ As above.

⁶⁴ Gh Akinci, <http://www.businessenvironment.org/dyn/be/docs/133/Session2.2Presentation2.2.1Akinci.pdf> 8 (accessed 3 April 2014).

⁶⁵ As above.

⁶⁶ Akinci (n 64 above).

⁶⁷ As above.

⁶⁸ FIAS (n 56 above) 10.

on the objectives of the zone programme, the type of activity inside the zone and their location can vary from a place to another one. The kind of activity involved and the objectives have also an influence on the size of the zone as well as the identification of the targeted market for the final products.⁶⁹ The table below shows the types of SEZs and their features.

Table 1: Types of Zones

Type of Zones	Development Objective	Physical Configuration	Typical Activities	Eligible Activity	Market
Free Trade Zone (Commercial Free Zone)	Support trade	Size<50 hectares	Ports of entry	Entrepôt and trade related activities	Domestic, re-export
Traditional EPZ	Export manufacturing	Size <100 hectares; total area is designated as an EPZ	None	Manufacturing other processing	Mostly export
Hybrid EPZ	Export Manufacturing	Size<100 hectares; only part of the area is designated as an EPZ	None	Manufacturing, other processing	Export and Domestic Market
Freeport	Integrated development	Size>100 km ²	None	Multi-use	Domestic, internal and export markets
Enterprise Zone Empowerment Urban Free Zones	Urban revitalisation	Size< 50 hectares	Distressed urban or rural area	Multi-use	Domestic
Single Factory EPZ	Export manufacturing	Designated for individual enterprises	Countrywide	Manufacturing, other processing	Export market

Source: Special Economic Zones: Performance, lessons learned and implications for Zone development

⁶⁹ FIAS (n 56 above) 9.

2.2.1 Free trade zones (FTZ)

FTZ's are also called free zones and free commercial zones.⁷⁰ They are designed for more and less small areas with high fences surrounding them.⁷¹ The businesses in the zone benefit from duty-free and tax free advantages.⁷² They are located in most cases in the port of entry of the host country; they offer ware housing, storage, and distribution facilities for trade as well as transshipment and re-export operation.⁷³ The Colon Free Zone in the Republic of Panama is one of these kinds.⁷⁴ It was created in 1948 with the objectives of modernising the service sector and to streamline the regional commerce.⁷⁵ The Colon Free Zone is a commercial hub extending over 400 hectares located near the canal of Panama.⁷⁶ It is dedicated to import and export operations and offers 6 (six) ports equipped with high tech cargo handling facilities, large containers terminal and warehouses.⁷⁷ The companies in the zone benefit from fiscal advantages like 0% taxation on profit from re-exportations; 0% duties and quota on importations and exportations and 0% taxation on billing.⁷⁸

2.2.2 Export Processing Zones (EPZ)

EPZ's exist in two forms: the traditional model of EPZ and the recently developed Hybrid EPZ.⁷⁹ Both models consist in industrial complexes designed for manufacturing and related businesses and offer attractive incentives to companies.⁸⁰ Most of their activities are exports oriented.⁸¹ The traditional form of EPZ is dedicated only to industries specialised in export-oriented manufactured products, which hold a licence under the EPZ regime.⁸² The Karachi Export Processing Zone (KEPZA) is an example of traditional EPZ.⁸³ The KEPZA hosts industries in the field of garment, jewellery, high technology and chemicals which export their

⁷⁰ FIAS (n 56 above) 10.

⁷¹ FIAS (n 56 above) 10.

⁷² FIAS (n 56 above) 10.

⁷³ FIAS (n 56 above) 10.

⁷⁴ FIAS (n 56 above) 10.

⁷⁵ Colon Free Trade Zone, <http://www.colonfreetradezone.com/freezone-colon.html> (accessed 3 April 2014)

⁷⁶ As above.

⁷⁷ Colon Free Trade Zone (n 75 above).

⁷⁸ Colon Free Trade Zone (n 75 above).

⁷⁹ FIAS (n 56 above) 10.

⁸⁰ FIAS (n 56 above) 10.

⁸¹ FIAS (n 56 above) 10.

⁸² FIAS (n 56 above) 10.

⁸³ FIAS (n 56 above) 10.

products to the Middle East, Far East, Africa, America and Central Asia.⁸⁴The hybrid EPZ, contrary to the traditional one, is divided in two parts: one part which is reserved for all types of industries regardless of exportation oriented business and the other parts restricted to only enterprises with export-oriented activities that hold a licence to operate under the EPZ regime.⁸⁵ By way of example, the Lat krabang Industrial Estate in Bangkok, Thailand is a Hybrid EPZ.⁸⁶

2.2.3 Free ports

Free ports are larger than the other zones due to the range of activities they accommodate.⁸⁷ All types of industries such as tourism and retail sales can be developed here.⁸⁸ People can even reside on the site and have access to a broad range of services.⁸⁹ Free ports offer far better incentives and much more benefits to the businesses inside the zone.⁹⁰ Aqaba Special Economic Zone (ASEZ) in Jordan is an example of Freeport.⁹¹ The ASEZ was inaugurated in 2001 and extends over 375 km², meaning that it covers the 27 km coastline of Jordan.⁹² It is a multi-sector development zone where apply a low tax rate, duty-free and liberal regulations.⁹³The ASEZ main features consist in an urban portal for tourism activities, Education, health and environmental businesses, a commercial hub for services and commerce industries as well as industrial parks for light and heavy industries.⁹⁴

2.2.4 Enterprise zones

Enterprise zones are also known as Empowerment Zones and Urban Free Zones and are typical to developed countries.⁹⁵ In the developing world, only South Africa promotes this particular

⁸⁴ Export Processing Zone Authority, <http://www.epza.gov.pk/karachi.html> (accessed 13 May 2014).

⁸⁵ FIAS (n 56 above) 10.

⁸⁶ FIAS (n 56 above) 10.

⁸⁷ FIAS (n 56 above) 10.

⁸⁸ FIAS (n 56 above) 10.

⁸⁹ FIAS (n 56 above) 10.

⁹⁰ FIAS (n 56 above) 10.

⁹¹ FIAS (n 56 above) 10.

⁹² Aqaba special economic zone authority, <http://www.aqabazone.com/?q=node/236> (accessed 13 May 2014).

⁹³ As above.

⁹⁴ Jordan Investments boards

<http://www.jordaninvestment.com/BusinessandInvestment/Wheretoinvest/AqabaSpecialEconomicZoneASEZ/tabid/268/language/en-US/Default.aspx> (accessed 8 April 2014).

⁹⁵ FIAS (n 56 above) 11.

type programme.⁹⁶ Enterprise zones are designed to support the development of remote area or boost growth and job creation in specific disadvantaged urban areas to tackle poverty and joblessness.⁹⁷ Means like tax holidays and financial grants serve as incentive mechanisms to attract investors into these zones.⁹⁸ In the United States, the Federal government has set up the empowerment zones and enterprise communities programme (EZ/EC) in collaboration with States, local governments and communities to stimulate economic growth and social development.⁹⁹ These EZ/EC programme provide grants and tax credits for businesses to settle in targeted distressed urban neighbourhoods and rural areas across the country.¹⁰⁰ These kinds of Zones do exist in Gary, Hammond and East Chicago in the state of Indiana.¹⁰¹

2.2.5 Single factory EPZ

Unlike the other types of zones, the Single factory EPZ does not require the enterprises to be located inside a delineated perimeter. Indeed in the single factory EPZ programme the businesses can freely choose their location on the territory of the country.¹⁰² The businesses just need to be licensed under the Single factory EPZ programme to benefit from the tax and duty exemptions provided with respect to their activities.¹⁰³ The examples of these zones are called “maquiladoras” in Mexico.¹⁰⁴

In addition to the different types of Zones listed above, the rapid evolution in the design of SEZs gave birth to highly specialised industrial estates.¹⁰⁵ The trend is on the development of more specialised and sophisticated industrial unit designed to accommodate industries and businesses

⁹⁶ FIAS (n 56 above) 11.

⁹⁷ FIAS (n 56 above) 11.

⁹⁸ FIAS (n 56 above) 11.

⁹⁹ US department of housing and urban development,

http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/economicdevelopment/programs/rc (accessed 10 April 2014).

¹⁰⁰ FIAS (n 56 above) 11.

¹⁰¹ Empowerment zone; http://en.wikipedia.org/wiki/Empowerment_zone (accessed 10 April 2014).

¹⁰² FIAS (n 56 above) 11.

¹⁰³ FIAS (n 56 above) 11.

¹⁰⁴ FIAS (n 56 above) 11.

¹⁰⁵ FIAS (n 56 above) 11.

in the diverse field of activities.¹⁰⁶ From cutting edge technology parks and science complexes, to innovative financial and non-financial enterprises; as well as up-to-date logistical platforms.¹⁰⁷

The table below shows some examples of specialised zones.

Table 2: Examples of Specialized Zones

Type of Zone	Development Objective	Size	Typical Location	Activities	Markets
Technology or Science Parks	Promote high tech and science-based industries	< 50 hectares	Adjacent to universities, institutes	High technology activities	Domestic and export
Petrochemical Zones	Promote energy industries	100-300 hectares	Petrochemical hubs; efficient energy sources	Petrochemicals and other heavy industry	Domestic and export
Financial Services	Development of off-shore financial services	< 50 hectares	None	Offshore financial and non-financial services	Export
Software and Internet	Development of soft-ware and IT services*	< 20 hectares	Adjacent to universities, urban areas	Software and other IT services*	Export
Airport-based	Air cargo trade and transshipment	< 20 hectares	Airports	Warehousing, transshipment	Re-export and domestic
Tourism	Integrated tourism development	200–1,000 hectares	Tourism areas	Resorts and other tourism	Export and domestic
Logistics Parks or Cargo Villages	Support logistics	< 50 hectares	Airports, ports, transport hubs	transshipment	Re-export

Source: Special Economic Zones: Performance, lessons learned and implications for Zone development

¹⁰⁶ FIAS (n 56 above) 11.

¹⁰⁷ FIAS (n 56 above) 11.

2.3 The rationale for the move towards Special Economic Zones (SEZs)

The motivations for countries to create SEZs differ from one to another depending on whether they are developing economies or developed countries. Developing countries set up SEZs to achieve targeted objectives tied to their development perspectives; they focus on the gain in terms of innovation, infrastructure, jobs and transfer of knowledge and technology.¹⁰⁸ Actually SEZs serve as social-economic tools for the government of the host country, there are also considered to be policy tools, as well as development tools.¹⁰⁹ For the developed countries like United States of America SEZs just serve as a means to afford flexible regulation to companies, decrease high costs of production and enhance the competitiveness of the industries on the global market.¹¹⁰

2.3.1 Special Economic Zones as a social and economic tool

One of the most prominent issues in developing countries is the high rate of unemployment. In solving that problem, SEZs serve as jobs provider in the host country. The development of business inside and outside the zones offers job opportunities that contribute to income generation, help combat and reduce poverty.¹¹¹ SEZs also contribute to stimulate rapid economic growth in the host country.¹¹² Indeed, the business activity inside the zone is based on non-traditional products processed for export; it has the effect of increasing the trade performance of the host country and when the zone programme is successful, the high volume of exports from the SEZs benefits the economy through the volume of earnings in foreign exchange.¹¹³

2.3.2 Special Economic Zones a Policy tool

Governments use SEZs as a means to test new strategies and approaches to be applied later on to the whole economy.¹¹⁴ Most of the time, it covers prospective economic reforms that aim to help the country improve and diversify its industrial sector.¹¹⁵ SEZs are places where new model of

¹⁰⁸ FIAS (n 56 above) 12.

¹⁰⁹ FIAS (n 56 above) 12.

¹¹⁰ FIAS (n 56 above) 12.

¹¹¹ D Madani, 'A review of the role and impact of export processing zones' 1999 35.

¹¹² Madani (n 111 above) 23.

¹¹³ Madani (n 111 above) 23.

¹¹⁴ FIAS (n 56 above) 12.

¹¹⁵ FIAS (n 56 above) 12.

legislation with respect to business creation, financial regulation, land acquisition, labour regulation and investments are first applied then extended to the entire economy so as to increase its competitiveness.¹¹⁶ SEZs also serve to attract more FDI into the country and in the mean time offer rooms to manoeuvre when the country wants to reduce anti-export bias without removing the trade barriers to protect local industries.¹¹⁷

2.3.3 Special economic zones a development tool

Everywhere they have been successfully implemented, SEZs have produced an effect on the rapid development of the country.¹¹⁸ The first thing is that the great amount of FDI flows into the country allows it to develop the size and structure of its economy.¹¹⁹ They contribute to the improvement and creation of quality infrastructure to make the movements of goods and people as smooth as possible.¹²⁰ And then there is always a massive transfer of technology from the side of the investors in the host country to support the productivity and performance of their firms.¹²¹ It must be noted however, that the R&D process inside the SEZs contributes to increase knowledge and skills in the host country as well as the demonstrations which have the effect to inspire local entrepreneurs to develop innovative product.¹²²

2.4 Characteristics of Special Economic Zones (SEZs)

SEZs share quite similar characteristics despite the different ways by which they are designed and the objectives behind their implementation. All of them are built on specific geographical and technical features; apply regulations that meet the need of their activities; use incentives to be attractive and involve public or private and even both public and private when it comes to their development.

¹¹⁶ FIAS (n 56 above) 12.

¹¹⁷ FIAS (n 56 above) 12.

¹¹⁸ FIAS (n 56 above) 12.

¹¹⁹ FIAS (n 56 above) 12.

¹²⁰ Madani (n 111 above) 35.

¹²¹ Madani (n 111 above).

¹²² Madani (n 111 above).

2.4.1 Geographical and technical features

Initially SEZs were developed as enclaves in remote areas, but recent developments in the implementation of zones show that SEZs can settle in any location suitable for their activities on the territory of the host country.¹²³ In fact, SEZs located very close to high quality road network and surrounded by well-developed infrastructures have competitive advantages that contribute hugely to their success in attracting investors.¹²⁴

Another thing is the evolution from zones being delineated perimeters with fences or strict physical limitation to more flexibility which allows large scale property development.¹²⁵ In addition, zones provide for facilities, amenities and services to accommodate new types of businesses or industries such as high technology, financial industries and tourism. Zones now provide accommodation for workers.¹²⁶

2.4.2 Regulatory approach

In the beginning of SEZs development, the regulation was really strict; the process of approval was described to be very long, unclear and expensive. And even the decision to approve was based most of the time on political motivations.¹²⁷

Presently, the trend is on the removal of all the distorting measures from the side of the government and to a move towards flexibility and liberalisation in the policies and incentives applied to the SEZs programmes development.¹²⁸ The rules that provide for restriction with respect to zone location and the type of activities do not exist anymore. Now, SEZs are allowed to expand their activities beyond manufacturing and processing to commercial and professional services.¹²⁹ All investors and investments are now treated equally; this is because the legal frameworks are drafted to guarantee the protection and benefits accruable to companies irrespective of the origin of the investors and the industries that fall under its provision.¹³⁰ There

¹²³ FIAS (n 56 above) 13.

¹²⁴ M Murray, <http://blogs.law.uiowa.edu/ebook/faqs/what-are-special-economic-zones> 2010 (accessed 10 April 2014).

¹²⁵ As above.

¹²⁶ Murray (n 124 above).

¹²⁷ Murray (n 124 above).

¹²⁸ FIAS (n 56 above) 17.

¹²⁹ FIAS (n 56 above) 17.

¹³⁰ FIAS (n 56 above) 17.

is also a shift to make the approval process as smooth as possible; indeed the process for the establishment of SEZs is based on specified criteria, a quick and transparent process so as to attract private developers.¹³¹ The regulatory framework of SEZs has relaxed the condition with respect to the minimum export requirement to be compliant with the provision of World Trade Organisation (WTO). There is more flexibility with respect to the regulation applied to labour inside the zones; and then provision for streamlined customs and other administrative procedures make it easy for companies to do business.¹³²

2.5 Regime of incentives

Special Economic Zones are recognised to be incentives based so as to attract investors seeking for a favourable and cost effective environment to set up and develop their businesses or industries. The incentives related to SEZs development cover a broad range of financial and non-financial benefits.¹³³

The most applied category of incentives is for the investors in the SEZs to benefit from the tax-free and duty-free business environment.¹³⁴ Indeed the industries inside the zones can import as much as possible raw materials they need for their activities without paying any duties, and when it comes to the exportation of the products after processing, there is no export tax to be paid on the final product for export.¹³⁵ And then, the industries in the SEZs are offered tax holidays such as corporate, income tax as well as reduced tax-rates. These tax holidays are permanent in some cases and the investors can enjoy them for the period he will be doing business inside the SEZs. In some other instances, the investors will enjoy the tax holiday for a specific timeframe and then carry on doing his business with the payment of lower tax rate over the years.¹³⁶

Another kind of incentives given to the industries inside the zones is the provision for accessing the domestic markets on a duty-paid basis.¹³⁷ Although industries established in the SEZs must comply with the export requirements, they can be granted the opportunity to sell on the domestic

¹³¹ Murray (n 124 above).

¹³² FIAS (n 56 above) 17.

¹³³ Murray (n 124 above).

¹³⁴ FIAS (n 56 above) 17.

¹³⁵ FIAS (n 56 above) 17.

¹³⁶ Murray (n 124 above).

¹³⁷ FIAS (n 56 above) 16.

market on a quota basis.¹³⁸ In such an instance, the product entering the market of the host country is treated as imported and all the import duties, taxes and other charges related to imports are applied to them as imported goods that enter into the territory of the country.¹³⁹

To attract investors, SEZs also provide for easy and quick customs service so as to make transit of goods as smooth as possible. The government of the host country plays a role as well by making labour laws and environmental regulations more flexible and applying no restrictions on the ownership of industries as well as on the repatriation of profits of their business.¹⁴⁰ And then both, government of the host country and zones authorities work hand-in-hand to provide high quality communication services and infrastructure inside and around the zones to facilitate the transit of the goods coming in and going out.¹⁴¹

2.6 Ownership and management

In the beginning, the development and operation of SEZs were the business of the government and its agencies with the sole objective of attracting FDI into the country and increase its trade revenue.¹⁴² But the difficulties encountered by the investors in the public SEZs due to poor governance as well as lack of funds to create good quality facilities and infrastructure, opened the doors to the private sector in zones development.¹⁴³

The first zones to be established in the world were fully owned, developed and operated by the governments. Despite the enthusiasm from the side of the investors, they were not as successful as expected.¹⁴⁴ The reason for the failure of these zones were lack of efficiency in their operations as well as the existence of several ‘backward’ mode of regulations and the fact that governments did not always have funds to build quality infrastructure in their SEZs.¹⁴⁵ The failure of the governmental SEZs profited the privately-owned, developed and operated SEZs across the world. Nowadays 1200 zones of 2000 in the world are private.¹⁴⁶ Although private

¹³⁸ FIAS (n 56 above) 16.

¹³⁹ Madani (n 111 above) 16.

¹⁴⁰ Madani (n 111 above) 16.

¹⁴¹ Madani (n 111 above) 16.

¹⁴² Murray (n 124 above).

¹⁴³ Murray (n 124 above).

¹⁴⁴ Murray (n 124 above).

¹⁴⁵ Murray (n 124 above).

¹⁴⁶ Akinci (n 64 above) 8.

SEZs were deemed to be more efficient and well equipped than their public counterparts, they encountered difficulties related to the poor local services and infrastructure as well as inadequate regulation surrounding their activities.¹⁴⁷

To address all these problems, the solution found was to organise SEZs development through Public-Private partnership.¹⁴⁸ Nowadays, most of the zones are developed on this form of partnership in which the government takes responsibility for the provision of high quality services, infrastructure and facilities; provide for efficient regulation with respect to the SEZs program; support and facilitate the acquisition of lands necessary for the establishment of the SEZs and provide for funds or guarantees.¹⁴⁹ In addition, the private partner is involved in the realisation of the necessary infrastructure and facilities inside the zone and even around.¹⁵⁰ This public-private partnership takes the forms of concession agreements; management contracts; built-operate-transfer (BOT) contracts; build-own-operate (BOO) contracts and build-own-operate-transfer (BOOT) agreements.¹⁵¹ Private partners are sometimes granted the management of the government-owned SEZs on contract basis or are in charge of the exploitation of government's assets on lease inside the zone.¹⁵² In some instances, the government consents to include a clause for transfer of ownership in the management contract providing that the private partner meets a certain level of performance.¹⁵³ The move toward the development of SEZs on partnership with the private sector led governments to reorganise the administration systems of the SEZs.¹⁵⁴ In fact, the administrative system of SEZs involves different bodies. Some of the bodies are in charge of the development, administration and promotion while others deal with the regulation and other tasks related to the SEZs activities.¹⁵⁵

¹⁴⁷ FIAS (n 56 above) 18.

¹⁴⁸ FIAS (n 56 above) 18.

¹⁴⁹ FIAS (n 56 above) 18.

¹⁵⁰ FIAS (n 56 above) 18.

¹⁵¹ FIAS (n 56 above) 19.

¹⁵² FIAS (n 56 above) 19.

¹⁵³ FIAS (n 56 above) 19.

¹⁵⁴ FIAS (n 56 above) 19.

¹⁵⁵ FIAS (n 56 above) 20.

2.7 Challenge and benefits

Despite the fact that many countries, mainly developing countries around the world, rush to establish SEZs in their territories to benefit from their positive impact on the local economy and industry, there are many challenges that are encountered during the process, from the establishment to the exploitation of the zone.¹⁵⁶ In the next section of this dissertation, the challenges and benefits are discussed.

2.7.1 The challenges

In the first place, creation of new SEZs is a source of population displacement in developing countries because of land grabbing.¹⁵⁷ In the case of a geographically located type of zone, the process of acquisition of pieces of land always leads to the relocation of the population that originally own and use the land for farming purposes.¹⁵⁸ Sometimes these population are forced to leave their lands and receive a very low price in terms of compensation. In addition the places chosen as relocation areas are most of the time not suited to practice agriculture.¹⁵⁹ Second, relaxed regulations applied to SEZs may cause economic, environmental and social damages.¹⁶⁰ In some instances, the government of the host country use to subsidy the development of the SEZs, provide tax holidays and other economic concessions that can result in big loses when it cannot recover these high costs over time.¹⁶¹ Environmental pollution is another bad effect of the relaxed regulation; indeed low environmental standard and lack of efficient control of the activities of the zones lead to environmental disasters.¹⁶² Third, the relaxation of labour law inside the SEZs allows the exploitation of the workers who have to fulfil their tasks in poor conditions, sometimes at the risk of their health and lives.¹⁶³ And then, it must also be noted that

¹⁵⁶ Murray (n 124 above).

¹⁵⁷ Murray (n 124 above).

¹⁵⁸ Murray (n 124 above).

¹⁵⁹ Murray (n 124 above).

¹⁶⁰ Murray (n 124 above).

¹⁶¹ Murray (n 124 above).

¹⁶² Murray (n 124 above).

¹⁶³ Murray (n 124 above).

abuse on the female work force contributes to the huge challenges in the work place; women are sometimes victims of segregation and are not paid at the same rate as the men.¹⁶⁴

2.7.2 The benefits

The social and economic benefits that arise from the development of SEZs can be really considerable for the host country compared to the costs. Actually, in terms of social impact the successful SEZs programmes create a great number of job opportunities and income generation. These job creations are directly from the firms operating inside the zone and indirectly through the development activities linked to the ones inside the zone from businesses located outside.¹⁶⁵ it is a fact that SEZs employ a great number of women which contribute to reduce poverty and combat their economic vulnerability.¹⁶⁶ Also, SEZs have an influence on the level of knowledge and skills since they contribute to the upgrade and development of skills in the host country to meet their needs in human resources.¹⁶⁷ In terms of economic benefits, the successful SEZs programme permit not only the host country to improve its trade performance since it is going to export a great and diversified volume of manufactured products but also the taxes levied on the firms by the government increase its revenue and foreign exchange earnings.¹⁶⁸ Other positive effects of SEZs appear in their contribution to attract more FDIs and allow transfer of technology in the host country.¹⁶⁹ Indeed, SEZs accommodate big Trans National corporations (TNCs) and attract foreign investors active in cross border businesses from all over the world. These kinds of firms require huge amounts of money to be invested in the host country that boost the economic growth. Then, the fact that the investors want to recover their funds and make profits as fast as possible ends up in a huge transfer of technology to set up the most modern and sophisticated factories. Also, the host country gain from SEZs through the realisation of high quality infrastructure and support services for the transfer and transit of goods destined or produced in

¹⁶⁴ Murray (n 124 above).

¹⁶⁵ FIAS (n 56 above) 32.

¹⁶⁶ FIAS (n 56 above) 32.

¹⁶⁷ FIAS (n 56 above) 32.

¹⁶⁸ FIAS (n 56 above) 32.

¹⁶⁹ FIAS (n 56 above) 32.

the zones as well as the development of the local industry that supply goods and services to the firms inside the SEZs.¹⁷⁰

Concluding remarks

SEZs are economic programmes that existed for very long times. Their diversity and the evolution in the manner in which they are implemented suggest that there is no static approach in definition of zones; however they share the same characteristics. The motivation for governments to establish SEZs varies from a country to another depending on the fact they are developed or developing countries. The momentum SEZs have got mostly in developing countries is justified by the combined effects of the necessity for them to address issues related to poverty as well as economic development; and the need for multinational corporations to find the best way to reduce their costs of production. The successful examples of SEZs do exist, the failures as well. Whether the focus is always on the benefits accruable to countries that implement or plan to establish zones programmes, SEZs may sometimes be sources of socio-economic challenges.

¹⁷⁰ FIAS (n 56 above) 32.

Chapter 3

Approach of SEZs in Côte d'Ivoire

3.1 Introduction

In the chapter 2, this research examined the concept of SEZs and the classification of SEZs. It also unpacked the different reasons why developed and developing countries establish SEZs and pointed out the specific characteristics of these zones as well. In addition to the fact that SEZs programme can result in social and economic benefits for the host country was established, the fact that SEZs are not always successful were also pointed out.

Many countries in SSA like Liberia and Senegal started SEZs in the 1970s to achieve economic development, but those initiatives were unsuccessful.¹⁷¹ In 1980, Mauritius established its SEZs programme with remarkable success; this inspired countries across the African continent and create a new wave of SEZs.¹⁷² Following the positive example of Mauritius the government of Côte d'Ivoire introduced plans to develop SEZs in its own country. The development of new information technologies coupled with the economic growth and the jobs it created worldwide inspired the government of Côte d'Ivoire to set up a SEZ dedicated to technology. Thus on 1 of October 2003, a team of expert headed by Sir Vincent Kragbe Gadou, Special Advisor to the President of the Republic of Côte d'Ivoire in charge of the Information and Communication Technologies (ICT) started a feasibility study that was completed in February 2004.¹⁷³ This team of experts decided to establish a free trade zone for information technologies and biotechnology '*Zone de la biotechnologie et des technologies de l'information et de la communication*' (ZBTIC).¹⁷⁴

The implementation process of the project started in 2004 with the creation of a General Commissionership in charge of its realisation by Decree no 2004-367 of 15 July 2004 and then the appointment of Sir Vincent Kragbe Gadou as General Commissioner by Decree no 2004-471

¹⁷¹ FIAS (n 56 above) 31.

¹⁷² FIAS (n 56 above) 31.

¹⁷³ <http://www.panapress.com/La-Cote-d-ivoire-lance-une-Zone-franche-de-la-biotechnologie--12-616815-4-lang4-index.html> (accessed 15 April 2014).

¹⁷⁴ As above.

of 9 September 2004 by the President of the Republic of Côte d'Ivoire.¹⁷⁵ The commissionership was in charge of seeking for technical and financial partnership to allow the ZBTIC become a reality.

On 30 November 2006, '*Village des Technologies de l'information et de la Biotechnologie*' (VITIB.SA), the company in charge of the operation and development of the ZBTIC was created with the full support of national and international partners. Finally, in 2008 the government of the Republic of Côte d'Ivoire launched the operations of its first free trade zone (FTZ) in Grand-Bassam.¹⁷⁶

3.2 The features of the ZBTIC

3.2.1 The design of the ZBTIC

Initially the plan was to establish the ZBTIC in Grand Lahou, a town located in the South-West, 152 km from Abidjan; but Grand Bassam located in the South was chosen to host the project due to its proximity to Abidjan.¹⁷⁷ The ZBTIC is an FTZ designed in form of enclave and it is expected to cover 780 hectares when the project reaches maximum capacity.¹⁷⁸ With its current location, the ZBTIC enjoys a rapid and full access to quality infrastructure such as the international airport regional hub for air transport; the port of Abidjan, the most efficient of the West African coasts; as well as good quality road and rail networks.¹⁷⁹

The ZBTIC is situated in a natural enclave made of a small island connected to the main land; it is surrounded by a lagoon as well as swampy areas with a lot of mangroves that make it a unique place for biologic research.¹⁸⁰ To connect the ZBTIC to the rest of the economy the developers plan to create new high quality transports and communication infrastructures around the zone.¹⁸¹

¹⁷⁵ <http://www.abidjan.net/qui/profil.asp?id=117> (accessed 15 April 2014).

¹⁷⁶ US embassy in Côte d'Ivoire: '*investment climate statement*' 2013
<http://www.state.gov/e/eb/rls/othr/ics/2013/204626.htm> (accessed 17 April 2014).

¹⁷⁷ D Nassa '*Zones franches en Côte d'Ivoire, entre mondialisation, objet et effets géographiques*' 2011 4
http://halshs.archives-ouvertes.fr/docs/00/58/03/53/PDF/Zone_franche_en_CA_te_d.pdf (accessed 17 April 2014).

¹⁷⁸ As above.

¹⁷⁹ Nassa (n 177 above) 4.

¹⁸⁰ Nassa (n 177 above) 4.

¹⁸¹ Vitib S.A, corporate movie https://www.youtube.com/watch?v=GNp2_Jg0WFk (accessed 17 April 2014).

3.2.2 Contribution to the economy

As the first of its kind in the country, the ZBTIC is an integrated part of the new industrial development program set up by the Ministry of Industry which consists in the creation of many Free Zones and Industrial Zones in the country.¹⁸² This program aims to diversify and improve the competitiveness of the domestic industries through the use of high quality industrial facilities and promotion of investments opportunities in the processing and manufacturing sectors.¹⁸³

Although the ZBTIC is still at an early stage of development, it holds high expectations, particularly in terms of job creation to help solve unemployment in the Côte d'Ivoire. Indeed the zone is expected to generate 40 000 direct jobs.¹⁸⁴ Another aspect of this is the huge potential of the ZBTIC to attract FDI to the country. It has started business with 50 registered companies.¹⁸⁵ The initial forecast of the project shows that, in terms of FDI, it would attract more than 250 billion Fcfa of investments and the expected trade revenue after the first five years of operation was estimated at 2 trillion Fcfa.¹⁸⁶

3.2.3 Planning arrangement

The ZBTIC project is a political tool used by the government of Côte d'Ivoire for the economic development of the country by attracting FDIs with a particular focus on biotechnology and information technologies.¹⁸⁷ The project is planned to take up to 20 years to reach its full implementation.¹⁸⁸ The ZBTIC is part of a national program that aim to create quality industrial infrastructure, strengthen domestic industries and promote private investment in the processing sector.¹⁸⁹ The ZBTIC is fully integrated into the national economic development strategy. Indeed, in terms of development, at the local level, the businesses trading inside the zone are expected to donate 0, 5% of their turn over to the host town as contribution towards its development.¹⁹⁰ The prospective impact of the ZBTIC goes far beyond the national boundaries;

¹⁸² n 22 above.

¹⁸³ n 22 above.

¹⁸⁴ Nassa (n 177 above) 11.

¹⁸⁵ US embassy in Côte d'Ivoire (n 176 above).

¹⁸⁶ n 173 above.

¹⁸⁷ Nassa (n 177 above) 10.

¹⁸⁸ Nassa (n 177 above) 6.

¹⁸⁹ n 22 above.

¹⁹⁰ Nassa (n 177 above) 7.

the whole region is expected to benefit from the program according to the ECOWAS bank for Investment and Development (EBID) that financially supports the ZBTIC.¹⁹¹ The programme will help accelerate the development of the sub-region through the availability of high technology and the reduction of technological gaps with the other regions of the world.¹⁹²

3.2.4 Governance arrangements

For the purpose of the administration of the ZBTIC, a private enterprise with minority public participation called VITIB S.A was set up to be in charge of the exploitation and development of the zone.¹⁹³ Bill no 2004-429 establishing the regime of the free zone of the biotechnology and information and the communication technologies in Côte d’Ivoire lay down the legal basis for its businesses.

VITIB.SA has a concession agreement with the government of Côte d’Ivoire to run its activities in the zone.¹⁹⁴ The company is divided into 3 bodies for operational needs. These bodies are – ‘*Vitib Academy*’, ‘*Vitib Prestation*’ and ‘*Vitib Infrastructure*’.¹⁹⁵ ‘*Vitib Academy*’ serves as a cutting-edge centre for R&D in the zone to support the targeted high performance technology production.¹⁹⁶ ‘*Vitib Academy*’ contributes as well to the development of local start-up in the field of technologies. In addition, it hosts capacity building programmes, run by foreign nationals in other languages, mainly English and Chinese to enable national staff members and businesses to engage with overseas investors.¹⁹⁷ ‘*Vitib Prestation*’ offers a broad range of facilities to accommodate businesses, their staff members, and provide hotels, shopping centres and medical services that can be used by investors, visiting partners and workers.¹⁹⁸ Lastly, ‘*Vitib infrastructure*’ represents the port of entry for investors in the ZBTIC.¹⁹⁹ It hosts the single window that provides investors with all the information and services needed to set up in the

¹⁹¹ ECOWAS Bank for Investment and Development (EBID) <http://www.bidc-ebid.org/fr/newsdetails.php?recordID=77> (accessed 25 April 2014).

¹⁹² As above.

¹⁹³ Nassa (n 177 above) 4.

¹⁹⁴ Nassa (n 177 above) 4.

¹⁹⁵ Nassa (n 177 above) 4.

¹⁹⁶ Nassa (n 177 above) 4.

¹⁹⁷ n 181 Above.

¹⁹⁸ Nassa (n 177 above) 5.

¹⁹⁹ Nassa (n 177 above) 5.

zone; the government agencies such as customs, revenue services are represented within this section.²⁰⁰

In the beginning, the activities of the ZBTIC were overseen by the General Commission in charge of the zone project established by the decree no 2004-471 of the 9 September 2004. The Commission worked in partnership with different agencies for technical assistance such as the national agency for investment promotion (CEPICI), the national agency for exports promotion (APEXCI), the national agency of expertise and development (BNETD), and the national research centre for agriculture (CNRA). To date, all these agencies are involved in the evolution of the technological park.

However, since 2012, the General Commission in charge of the technological park has ceased to exist. Following the reorganisation of the Board of Directors, the technological park which was initially attached to the Presidency of the Republic of Côte d'Ivoire is now under the Ministry of Post, Information and Communication Technologies (MPTIC).²⁰¹ The Inter-ministerial Order no 245/MPTIC/MEF of 10 August 2012 re-organised the institutional framework of the ZBTIC on two pillars: a management committee and an execution unit.²⁰² The management committee is placed under the authority of the Director General of Vitib.SA and is in charge of the strategic orientation of the ZBTIC. It makes decisions and facilitates the execution of the project.²⁰³ The execution unit which is under the supervision of the management committee is in charge of the operational aspect of the ZBTIC project.²⁰⁴

3.2.5 Financing arrangements

The ZBTIC finance model is based on the Public Private Partnership (PPP) structure that involves the government of Cote d'Ivoire and parastatal enterprises, national private corporations and multinational corporations, regional financial and guarantee institutions as well as international financial institutions.

²⁰⁰ Nassa (n 177 above) 5.

²⁰¹ *Arrêté interministériel n°245/MPTIC/MEF du 10 Août 2012 modifiant l'arrêté n°549/MEF/CAB du 30 Août 2010 portant création, attributions, organisation, et fonctionnement du projet de la zone franche de la biotechnologie et des technologies de l'information et de la communication (ZBTIC).*

²⁰² n 201 above, Art 5.

²⁰³ n 201 above, Art 6.

²⁰⁴ n 201 above, Art 9.

The budget of the ZBTIC project is estimated at thirty-one billion, one hundred and eighty thousand (31,180) FCFA and is funded by contributions from the West African Development Bank (WADB) thirteen billion (13) FCFA, ECOWAS Bank for Investment and Development (EBID) five billion (5) FCFA, Exim Bank India nine (9) billion FCFA and the government of Côte d'Ivoire contributed to four billion, eight hundred and fourteen thousand (4,814) billion FCFA.²⁰⁵ According to an internal document of the WADB, these funds based on a long-term plan will serve construction of all the facilities and amenities needed for the project to begin operating. The funds will be used to build roads inside and around the ZBTIC, connect the ZBTIC to the national communication and telecommunication network, and construct the headquarters of the company in charge of the operation and promotion of the ZBTIC.

As previously mentioned, the company in charge of the operation and promotion of the ZBTIC is Vitib.SA, a private company with diverse public and private stakeholders. Indeed, the capital of Vitib.SA is estimated at three billion (3) Fcfa, the government owns minority shares of 6%, while, 25% of the shares are owned by companies from India;²⁰⁶ The 69% remaining shares are owned by international and national companies such as MTN from South Africa, Moov Telecom a branch of Etisalat from United Arab Emirates and a Chinese company.²⁰⁷ The national companies involved in VITIB.SA consist of a cartel of businesses operating in the information and communication technologies sector and big national enterprises such as *Societe ivoirienne de raffinage* (SIR), *Societe National d'operation petroliere de la Côte d'Ivoire* (Petroci), *Societe des transports abidjanais* (SOTRA) and *Caisse d'epargne et des cheques postaux* (CECP).²⁰⁸

3.2.6 Targeted investments

The ZBTIC is fully dedicated to information and communications technologies as well as biotechnology.²⁰⁹ As such, the zone objective is to attract enterprises and businesses specialised in the field of technology with an interest in setting up in the zone to invest in the creation and production of value added goods in the trade of technological products. For instance, African

²⁰⁵ <http://www.boad.org/LinkClick.aspx?fileticket=KxsQiLyNgqA%3D&tabid=60&language=fr-FR> (accessed 25 April 2014).

²⁰⁶ Nassa (n 177 above) 5.

²⁰⁷ Nassa (n 177 above) 5.

²⁰⁸ Nassa (n 177 above) 5.

²⁰⁹ Nassa (n 177 above) 5.

New Technology (ANT), a branch of Golden Holdings specialized in the assembly of computers has set up in the ZBTIC in 2008 and plans to invest 72 billion FCFA for the purpose of its operations.²¹⁰ As an instrument to promote the development of information technologies within the West African sub-region, the ZBTIC hosts enterprises interested in training, research and development as well. Indeed, Hewlett Packard (HP) a multinational corporation specialised in the production of computers and other informatics devices has signed an agreement with Vitib S.A to operate a capacity building centre.²¹¹ In addition the ZBTIC aims to attract banks and financial institutions that will support investments in the ZBTIC; for example the African Guarantee and Economic Cooperation Fund has signed an agreement with Vitib S.A and established a branch in the zone in 2009.

3.2.7 Incentives granted by the ZBTIC

The companies located in the ZBTIC benefit from a very attractive tax regime as well as exemption on customs, exports and other duties with respect to their activities as provided by the law.²¹² The access to the domestic market is guaranteed to them since they are required to export 70% of their production.²¹³ In addition, other benefits are granted to the companies by the government to attract investments. These include the simplification of the whole process for the companies to set up in the zone,²¹⁴ by cutting red tape. The companies in the zone are allowed to repatriate all their profits free of charge and they can also open an account in foreign currencies for the purpose of their businesses.²¹⁵ With respect to labour and immigration law, their flexibilities permit investors to hire foreign workers.²¹⁶ Legal mechanisms have also been put in place to grant them long-term visas and work permits; foreign workers can enjoy tax exemptions on their salaries.²¹⁷ Within the territory of the ZBTIC, companies interested in real estate can easily acquire land to build factories and other facilities related to their businesses.²¹⁸

²¹⁰ Nassa (n 177 above) 5.

²¹¹ n 181 above.

²¹² n 181 above.

²¹³ Nassa (n 177 above) 3.

²¹⁴ n 181 above.

²¹⁵ n 181 above.

²¹⁶ n 181 above.

²¹⁷ n 181 above.

²¹⁸ n 181 above.

3.3 The legal framework for the ZBTIC

The Government of Côte d' Ivoire enacted a law establishing the ZBTIC. The main areas of coverage of that law include the following:

- object and scope of the bill of law;
- duties, rights, benefits of the businesses;
- tax and customs regime;
- ownership and control of the activities; and
- disputes settlement.

In the following section, some of the key provisions of the law establishing the ZBTIC will be discussed.

3.3.1 Object and scope of coverage

The Act no 2004-429 establishing the regime of the free zone regime of biotechnology and information and communication technologies in Côte d' Ivoire aims to lay the legal basis and the regulatory framework for all the activities with respect to the ZBTIC. It clearly defines the subjects and the areas of its application. The law applies to national or foreign investors, or a combination of both, regarding activities within the zone.²¹⁹ The act states the companies that can enjoy the free zone regime, and these are the ones that develop their activities exclusively inside the delineated area known as the '*Zone Franche de la Biotechnologie et des technologies de l'information et de la communication*' and designated under the initials (ZBTIC).²²⁰

Under this Act two categories of companies can benefit from the free zone regime. Namely, the operating and promotion enterprise that is responsible for the realization of infrastructure, management and promotion of ZBTIC and the user companies.²²¹

The user companies are as follows:²²²

²¹⁹ Free Zone regime act 429 of 2004 sec 1(1).

²²⁰ As above, sec 1(2).

²²¹ n 219 above, sec 1(3).

²²² n 219 above, sec 1(3).

- industrial companies specialised in the business of assembly, production of biotechnology and information technology and communications hardware and equipment;
- companies specialised in the provision of value added services operating in the field of biotechnology and information technology and communications hardware and equipment;
- firms specialised in research and development, capacity building in the field of biotechnology and information technology and communication products;
- banks and financial institutions to support the free zone investments.

The Act guarantees protection for investors against any form of eviction and that companies operating in the ZBTIC cannot be nationalised for any reason.²²³ Further, to make it easier for investors to do business, the Act provides for the simplification of procedures through an office of control and administrative coordination, with a one stop system inside the ZBTIC.²²⁴

Companies interested in setting up their businesses in the ZBTIC are required to carry out their activities exclusively in the field of biotechnology and information and communications technologies to be eligible.²²⁵ With respect to the operation and promotion company, it has a concession agreement with the state of Côte d' Ivoire for the realisation of infrastructure, management and promotion of the ZBTIC.²²⁶ The operation and promotion company is allowed by the law to sub-contract development and construction work.²²⁷ The concession entails delegation of public service and it has duration of 25 years, renewable by tacit agreement. As such, the operation and promotion company ensures compliance by users enterprises to the legal and regulatory provisions including the control and supervision of operations of import and export.²²⁸ With regard to the user enterprises, the benefit of the ZBTIC regime is subject to obtaining a license issued by the operation and promotion company.²²⁹

²²³ n 219 above, sec 1(4).

²²⁴ n 219 above, sec 1(4).

²²⁵ n 219 above, sec 1(6).

²²⁶ n 219 above, sec 1(7).

²²⁷ n 219 above, sec 1(7).

²²⁸ n 219 above, sec 1(7).

²²⁹ n 219 above, sec 1(8).

3.3.2 Duties, rights and benefits of the businesses

With respect to the duties of the businesses within the ZBTIC, in accordance with the Ivorian law and without prejudice to the obligations defined by the particular specifications in the approval documents, any user company must comply with the general obligations hereunder:²³⁰

- respect the public order;
- protect the environment, wild-life, flora and national heritage;
- respect the hygiene, sanitation and public health and general manner, respecting the rules of biosafety.²³¹

In the case of failure to comply with all or part of the provisions of this Act and its implementing rules, the company, in the person of its legal representative, will be issued a formal notice by the office of administrative control and coordination to take action to regularise its situation.²³² In the absence of regularisation, the removal of the preferential regime is pronounced in the same form as for the granting of the licence and the enterprise will not be able to claim any compensation.²³³

With regard to the use of foreign currencies, companies operating in the ZBTIC enjoy freedom of exchange within the framework of the regulations in force.²³⁴ For each category of firms, the initial investment can be covered by contributions in kind or in cash. The share of cash contributions can be made in CFA francs or foreign currencies.²³⁵ Each company benefiting from the regime of ZBTIC is required to open a special account in the national currency; this account is debited and credited according to the needs of their activities.²³⁶

Inside the ZBTIC, the company benefiting from the free zone regime is exonerated from taxes due on wages and salaries which the employer is responsible for paying to its staff.²³⁷ In the case of a company planning a collective dismissal, the joint committee established within ZBTIC

²³⁰ n 219 above, sec 2(13).

²³¹ n 219 above, sec 2(13).

²³² n 219 above, sec 2(14).

²³³ n 219 above, sec 2(14).

²³⁴ n 219 above, sec 2(15).

²³⁵ n 219 above, sec 2(16).

²³⁶ n 219 above, sec 2(17).

²³⁷ n 219 above, sec 2(18).

shall be asked for to arbitrate in collective disputes between the company and its staff.²³⁸ Companies operating in the ZBTIC are allowed to employ expatriate workers, a visa of entry in the territory is granted on the basis of their contract.²³⁹ The State guarantees in accordance with the exchange regulations in force, the freedom of transfer of wages received by the expatriate staff working in companies benefiting from the scheme of ZBTIC.²⁴⁰ A residence permit, equivalent to the duration of the employment contract, shall be issued to expatriate staff and his or her spouse and dependent children as well.²⁴¹ However the in case of permanent termination of his or her initial contract, the Côte d' Ivoire employee can avail himself or herself of his or her residence permit, providing that he or she obtains a new contract of employment within 3 months of the ending of his or her previous employment contract.²⁴²

3.3.3 Corporate taxation and customs

With respect to taxation, any company subject to the regime of ZBTIC is exempt from all dues and taxes during its activity.²⁴³ In return for this exemption, any company under the ZBTIC regime is subject to a withholding tax and a fee on the.²⁴⁴ Withholding tax on annual gross revenue, as follow:

- 0% for the first five years and 1% from the sixth year for business users;
- 0% for fifteen years and 1% from the sixteenth year for the promotion and exploitation company.²⁴⁵

User companies are subject to a royalty of 2.5% of their gross annual turnover of the start of operations. This royalty is calculated on the estimated turnover indicated in the documents of

²³⁸ n 219 above, sec 2(19).

²³⁹ n 219 above, sec 3(25).

²⁴⁰ n 219 above, sec 3(26).

²⁴¹ n 219 above, sec 3(27).

²⁴² n 219 above, sec 3(29).

²⁴³ n 219 above, sec 4(31).

²⁴⁴ n 219 above, sec 3(32).

²⁴⁵ n 219 above, sec 3(32).

approval. An audit is performed at the end of the year based on the turnover actually realized under the control of the operation and promotion company.²⁴⁶

Any company under the regime of the ZBTIC enjoys the following added tax benefits:²⁴⁷

- a reduction of tax for the recruitment of nationals.²⁴⁸ This reduction results from the reduction of 20% allowed on the basis of the withholding tax when the company employs a quota of nationals equivalent to 75% of its staff;²⁴⁹
- a tax credit for new investments.²⁵⁰ For the purposes of this provision, investments are admitted for up to 50% of their amounts a deduction of 50% on the basis of the withholding tax of 1%. Deductibility starts from the year of completion of the investments and lasts for a maximum period of four years.²⁵¹ Give rise to the application of these provisions, the investments related to constructions or extensions of constructed buildings for professional use that involve hiring of a quota of nationals for at least 50% of staff to hire.²⁵²

Inputs such as water, electricity, telephone, fuel and related lubricants as well as services provided to companies under the regime of ZBTIC are tax free.²⁵³

With regards to customs, any import or export operation is carried out under the supervision of the Customs Service. This import-export operation gives rise to a statement conforming to the customs procedure applicable in ZBTIC.²⁵⁴ Companies benefiting from the regime of the ZBTIC are exempt from customs duties and import taxes. They are exempted from the import verification programme.²⁵⁵ They are also exempt from customs duties and import taxes.²⁵⁶ The Act provides for the exporter, by request, to be granted a visa evidencing the origin of its goods

²⁴⁶ n 219 above, sec 4(32).

²⁴⁷ n 219 above, sec 4(33).

²⁴⁸ n 219 above, sec 4(33).

²⁴⁹ n 219 above, sec 4(33).

²⁵⁰ n 219 above, sec 4(33).

²⁵¹ n 219 above, sec 4(33).

²⁵² n 219 above, sec 4(33).

²⁵³ n 219 above, sec 4(34).

²⁵⁴ n 219 above, sec 5(36).

²⁵⁵ n 219 above, sec 5(37).

²⁵⁶ n 219 above, sec 5(38).

and services by customs services, in accordance with international agreements that Côte d' Ivoire is party to.²⁵⁷

3.3.4 Ownership of lands, real estates and control of the activities

The land within the ZBTIC can either be the property of the state or one of its branches, or the property of a natural or private legal person subject to compliance with the provisions of land legislation.²⁵⁸ Companies benefiting from the regime of the ZBTIC are subject to administrative control to verify the compliance of their activities within the provisions of this Act.²⁵⁹ They are subject to measures of control and supervision exercised by the customs authorities and other officials authorised by the office of administrative control and coordination.²⁶⁰

3.3.5 Jurisdiction and arbitration

Investments and activities that relate directly or indirectly to the ZBTIC are subject to the Free Zone Act.²⁶¹ Disputes which may arise in connection with the provisions of this Act shall be settled by arbitration.²⁶² The choice of the arbitration proceedings is left to the discretion of the parties. In case of difficulties, use will be made of a third expert.²⁶³

Decisions arising from arbitration shall be subject to enforcement by the courts of the place of execution and are not subject to appeal.²⁶⁴

²⁵⁷ n 219 above, sec 5(38).

²⁵⁸ n 219 above, sec 6(42).

²⁵⁹ n 219 above, sec 7(44).

²⁶⁰ n 258 above.

²⁶¹ n 219 above, sec 7(46).

²⁶² n 219 above, sec 8(47).

²⁶³ n 219 above, sec 8(48).

²⁶⁴ As above.

3.4 Performance and challenges

The free trade zone so far has failed to reach the targeted performance as expected by the government and its partners.²⁶⁵ Indeed the ZBTIC commenced business operations in 2008 with approximately 50 registered companies,²⁶⁶ two years later in 2010, and 15 companies were operating in the ZBTIC.²⁶⁷ With the expectation of create 40 000 direct jobs after 20 years, the ZBTIC has generated 400 jobs during its first two years of operations.²⁶⁸

Some of the reasons behind that poor performance of the ZBTIC can be found in the challenges the project faced. Indeed in 2010, the political crisis in Côte d' Ivoire worsened and ended in a bloody military conflict throughout the country. This situation undermined the confidence of the registered companies and the efforts to attract more investors in the free trade zone. In addition the ZBTIC is deemed to be among the most obstructed programme in the world.²⁶⁹ It must also to be noted that internal struggles resulted in poor governance of the ZBTIC, which in turn lenders and other partners to pull out of the project.

However, the government recently took strong actions to put the ZBTIC programme back on track and realign the free trade zone's objectives.²⁷⁰ In 2012, a few months after a new board was appointed, it succeeded in convincing the main financial partners to return to the ZBTIC project. On January 24th 2014, the Prime Minister of the Republic of Côte d' Ivoire and the Vice-Minister of the Foreign Affairs of India, the main partner of the ZBTIC project, officially inaugurated the facilities and baptised the ZBTIC under the name: '*Mahatma Ghandi Technological Park*'.²⁷¹

²⁶⁵ US embassy in Côte d' Ivoire (n 176 above).

²⁶⁶ n 263 above.

²⁶⁷ Nassa (n 177 above) 11.

²⁶⁸ Nassa (n 177 above) 11.

²⁶⁹ FIAS (n 56 above) 44.

²⁷⁰ US embassy in Côte d' Ivoire (n 176 above).

²⁷¹ <http://www.brunokone.com/vitib-linde-renouvelle-sa-confiance-a-la-cote-divoire> (accessed 27 April 2014).

3.5 Concluding remarks

Côte d' Ivoire is among the few African countries that have the ambition to be emerging economies in the nearest future. As such, the country plans to use SEZs to diversify and increase the processing capacities of its industries, attract FDI, create jobs and boost economic growth. So far, the '*Mahatma Gandhi Technological Park*' is the only FTZ in the country. The military conflict in the country and poor business environment has hampered the progress of the project, However, Côte d' Ivoire should not rely only on one FTZ to realise a sustainable economic growth. The fact, the National Development Plan 2012-2015 contains projects to create many other free zones is a good thing in itself; but the country lack a sound legal and regulatory framework to achieve such an objective.

Chapter 4

Interface between WAEMU, ECOWAS and Special Economic Zones (SEZs) in Côte-d'Ivoire

4.1 Introduction

In chapter 3, this study described the approach of SEZs in Côte-d'Ivoire. It emphasised the fact that the country has started SEZs programme very recently. It also described the fact that there is only one FTZ operating in the country at this time of writing this research and the FTZ is the Mahatma Gandhi technological park in Grand-Bassam. Although the technological park has failed to reach the targeted objectives, the government is trying to put it back on track and even plans are about to create many other SEZs as means to achieve a new industrialisation vision. The success of SEZs in attracting investors depends on internal factors, but in the case of developing countries, investors always have a look on the RTAs the country is party to before making the move to invest in the SEZs in developing nations.

Regional Trade Agreements (RTAs) are described as negotiated agreements used by governments to liberalise and facilitate trade in goods and services within a region.²⁷² The territory of RTAs can be restricted to countries belonging to the same geographical area, specifically neighbouring countries sharing borders;²⁷³ RTAs can extend over countries located far away from each other in different regions of the world as well.²⁷⁴

RTAs are by nature an exception to one of the core principle of the WTO; the principle of the Most Favourable Nation (MFN), as they allow the countries party to the agreements to enter into preferential trade relation with each other.²⁷⁵ The objectives behind such agreements are, among others, to increase freedom of trade, promote economic integration between countries, facilitate trade and help lower tariffs.²⁷⁶

²⁷² http://www.wto.org/english/tratop_e/region_e/scope_rta_e.htm (accessed 21 April 2014).

²⁷³ As above.

²⁷⁴ n 272 above.

²⁷⁵ http://www.wto.org/english/thewto_e/whatis_e/tif_e/fact2_e.htm (accessed 22 April 2014).

²⁷⁶ General Agreement on tariff in Trade 1994 (GATT), Art XXIV: 4.

4.2 Types and process of establishment of RTAs

RTAs are most often designed in the forms of Free Trade Area (FTA) or Customs Union (CU).²⁷⁷ According to article XXIV of the General Agreement on Tariffs and Trade 1994 (GATT), a CU consists of a substitution of a single customs territory to at least two or more customs territories for the purpose of eliminating restrictive duties and regulations of commerce covering substantially all the trade between the territories party to the union.²⁷⁸ In addition the member countries of the CU apply the same duties and regulations to the trade of territories not party to the union.²⁷⁹ As an illustration the Southern Africa Customs Union (SACU) is a CU which encompasses the customs territories of Botswana, Lesotho, South Africa and Swaziland.²⁸⁰ The FTA is defined as a group of many customs territories.²⁸¹ Inside the FTA, duties and restrictive regulations of commerce are removed among the territories party to the agreement on products originating in these territories.²⁸² The Dominican Republic-Central America-United State Free Trade Agreement (CAFTA-DR) is an example of this concept.²⁸³

The process of establishment of RTAs covering trade in goods is strictly governed by the provision of Article XXIV of GATT 1994. According to paragraph 7, countries entering in a CU or FTA with reciprocal preferences must comply with the notification process to the Committee on Regional Trade Agreements (CRTA) so as to enable other member countries of the WTO to access detailed information about the agreement. The other members of the WTO, on the basis of the information provided, can make comments or reservations on the proposed trade agreement.²⁸⁴ With regard to developing countries and least developed countries (LDCs) which cannot meet the exact requirements of reciprocity and tariff removal as provided by article XXIV of GATT in their agreements, the paragraph 2(c) of the enabling clause serves as the legal basis for them to enter into non-reciprocal agreements.²⁸⁵ The agreements covering trade in services like economic integration agreements fall under the provision of the General Agreement on

²⁷⁷ n 272 above.

²⁷⁸ n 276 above, article XXIV.

²⁷⁹ n 276 above, article XXIV: 8 (a).

²⁸⁰ <http://rtais.wto.org/UI/PublicAllRTAList.aspx>

²⁸¹ n 276 above, article XXIV: 8 (b).

²⁸² As above.

²⁸³ n 280 above.

²⁸⁴ n 276 Above, Art XXIV: 7.

²⁸⁵ WTO, decision of 28 November 1979 (L/4903).

Trade in Services (GATS). Article V: 7 of GATS provides that countries intending to enter into such agreements shall promptly notify the Council of Trade in Services; this notification must come along with all documents and related information for analysis before approval.

It has to be mentioned that beside the commonly known RTAs, similar agreements exist in the forms of Preferential Trade Arrangements (PTAs).²⁸⁶ By way of example, the African growth opportunity Act (AGOA) that grants intangible incentives like duty free on export products originating from SSA countries in the United States.²⁸⁷ PTAs are non-reciprocal preferential schemes; they involve the application of the general system of preference (GSP) as provided the WTO.²⁸⁸

4.3 Scope of coverage and current evolution of RTAs

Countries entering into RTAs include in their agreements provisions which may always vary from one RTA to another one. Indeed RTAs do not provide only for tariff-cutting any longer; some have incorporated complex policy mechanisms covering intra-trade between member countries like customs administration, standard and safeguard provisions as well as mutual preferential regulatory framework for specific sectors such as services.²⁸⁹

The last estimation of 31 January 2014 on the number of RTAs by the WTO revealed that 377 RTAs are in force, with up to 583 notifications; and 90% of the RTAs in force are FTAs Agreements, while the remaining 10% are CUs.²⁹⁰ Of these notifications, the highest number goes to the ones made under article XXIV of the GATT at 411, followed by 39 notifications under the enabling clause. In addition 133 were notified under article V of GATS.²⁹¹ All these agreements are deemed to have a significant impact on the development of world trade. Meanwhile the increasingly great number of RTAs, as well as the new trend of regionalism that consists in the creation of mega-regional blocs such as the Tripartite Free Trade Area (TFTA) in

²⁸⁶ <http://ptadb.wto.org/About.aspx> (accessed 22 April 2014).

²⁸⁷ <http://trade.gov/agoa/> (accessed 22 April 2014).

²⁸⁸ n 285 above.

²⁸⁹ n 272 above.

²⁹⁰ http://www.wto.org/english/tratop_e/region_e/region_e.htm.

²⁹¹ As above.

Africa and Trans Atlantic Free Trade Area (TAFTA), create some concerns about the future of the of the multilateral trading system.²⁹²

4.4 Rules of origin in RTAs

Rules of origin refer to the technical criteria that manufactured and non-manufactured import products have to fulfil so as to be regarded as originating from a particular country in the world, whether it is member or not of an RTA.²⁹³ Rules of origin play an important role in the context of international trade, because the tariff rate, the preferential treatment and the potential restrictions that could be applied by a country to an imported product depend on the origin of this product.²⁹⁴ They also serve as means to establish reliable trade statistics, to mark and impose a label on a product. In addition they serve as a reference for the purpose of government procurements.²⁹⁵

In the specific context of RTAs, rules of origin are key elements that permit identification of products originating from member countries in such a way to allow them to benefit from preferential treatment when they are exported within the region as provided in the terms of the treaty establishing the RTA that the country is party to.²⁹⁶ Despite the existence of many criteria to determine the origin of a product, the substantial transformation criteria are the one most recognised in the world.²⁹⁷ In addition to the transformation criteria, some RTAs include other requirements, like the change of tariff classification, the value added percentage and type of manufacturing and processing operation the good undergoes before being marketed.²⁹⁸ In 2004, WAEMU and ECOWAS harmonised their provision on rules of origin.²⁹⁹ Meanwhile the approval criterion for a product to be regarded as originating from WAEMU are deemed to be slightly more flexible than the requirements as provided by ECOWAS.³⁰⁰ Even for the provision

²⁹² n 290 above.

²⁹³ WTO http://www.wto.org/english/tratop_e/roi_e/roi_info_e.htm (accessed 25 April 2014).

²⁹⁴ Sargent & Matthews (n 34 above, 1741).

²⁹⁵ As above.

²⁹⁶ n 294 above.

²⁹⁷ n 294 above.

²⁹⁸ n 294 above.

²⁹⁹ WTO, http://www.wto.org/english/tratop_e/tpr_e/s236_sum_e.pdf. (accessed 25 April 2014)

³⁰⁰ N Koyama 'SEZs in the context of regional integration creating synergies for trade and investment' in T Farole et al special economic zones: Progress, emerging challenges and future directions 2011 140.

with regard to products from SEZs the rules applied differently and that could be a source of concerns for SEZs based firms and potential investors interested in the zones in Côte d'Ivoire.

4.5 The West African Economic Monetary Union (WAEMU) and SEZs

WAEMU is a sub-regional organisation gathering the following eight West African countries: Republic of Benin, Burkina Faso, Republic of Côte d'Ivoire, Republic of Mali, Republic of Niger, Republic of Senegal, Togolese Republic and Bissau Guinea.³⁰¹ WAEMU is a plurilateral RTA notified at the WTO on the 27 October 1999 under the enabling clause. In fact, it is a Customs Union covering trade in goods based on a treaty signed on 10 January 1994 and entered on force in 1 January 2000.³⁰²

4.5.1 Objectives and scope of coverage of WAEMU

The objectives of WAEMU are, among others to:

...strengthen the competitiveness of financial and economic activities of the Member States in the framework of an open and competitive market and legal environment streamlined and harmonised; ensure the convergence of economic performance and policies of the Member States through the establishment of a multilateral surveillance procedure; between Member States create a common market based on free movement of persons, goods, services, capital and the right of establishment of self-employed persons and employed, as well as a common external tariff and a common commercial policy; establish a coordination of national sectoral policies, the implementation of joint actions and possibly common policies, particularly in following areas: human resources, planning, transport and telecommunications, environment, agriculture, energy, industry and mining; harmonise, to the extent necessary for the proper functioning of the common market, the laws of the Member States and in particular the system of taxation.³⁰³

The provisions of the treaty establishing the WAEMU cover the diverse aspect of trade and investment between member countries as well as the relationship between member countries and third parties. Indeed, WAEMU's treaty deals with diverse topics with respect to accession, anti-

³⁰¹ *Traité modifié de l'Union Economique et Monétaire Ouest Africaine (UEMOA).*

³⁰² <http://rtais.wto.org/UI/PublicShowMemberRTAIDCard.aspx?rtaid=97> (accessed 25 April 2014).

³⁰³ n 301 above, art 4.

dumping measures, competition, countervailing measures, customs related procedures, dispute settlement, general exceptions and security exceptions, exports restrictions, rules of origin, safeguard measures, sanitary and phyto-sanitary measures, subsidies, technical regulation, standards and technical barriers to trade.³⁰⁴

4.5.2 Provision applicable to products from SEZs in WEAMU

The establishment of the regulatory framework applicable to the rules of origin in WAEMU followed 3 steps. In fact, the appendix of the WAEMU treaty that lays the foundation of the customs union provided for the first set of rules under the provision of the additional Act no 04/96, establishing a transitional preferential tariff for trade in WAEMU and a method of financing.³⁰⁵ The Commission of WAEMU then endorsed the provisional act in the additional protocol no III/2001 of 19 December 2001 relating to the rules of origin of products in WAEMU.³⁰⁶ Later on, the additional protocol no III/2001 was modified in some of its provisions by the additional protocol no I/ 2009/ CCEG/ UEMOA.³⁰⁷

Thus, the rules of origin which apply to trade within WAEMU are governed by a combination of the additional protocol no III/2001 and the articles 8, 9, 10 of the additional protocol no I/2009.

The protocol no III/2001 establishes the rules of origin in trade between members of the Economic and Monetary Union (WAEMU) and the procedures for issuing and verification of certificates of origin.³⁰⁸ The provisions applicable with regard to the determination of products originating from WAEMU are listed in the Title III of the protocol no III/2001; they cover non-processed product,³⁰⁹ handcrafts,³¹⁰ industrial products,³¹¹ and then in the chapter IV there are provisions dealing with operations that do not confer community origin. This chapter IV is the

³⁰⁴ n 302 above.

³⁰⁵ As above.

³⁰⁶ UEMOA, protocol additionnel no.III instituant les regles d'origine des produits.

http://www.uemoa.int/Pages/Actes/NewPages/protocole_additionnel_03.aspx (accessed 26 April 2014).

³⁰⁷ UEMOA, protocol additional no. I/ 2009/CCGE/UEMOA modifiant le protocol additional no. III/2001, instituant les regles d'origine des produits de l'uemoa,

http://www.uemoa.int/Documents/Actes/protocole_add_01_2009_CCEG_UEMOA.pdf (accessed 26 April 2014).

³⁰⁸ n 306 above, art 2.

³⁰⁹ n 306 above, Art 4.

³¹⁰ n 306 Above, Art 6.

³¹¹ n 306 Above, Art 7.

one whose provision was modified in the articles 8, 9 and 10 of the additional protocol no I/2009.

Despite the fact that protocol no III/2001 does not specifically mention SEZs, the characteristics and criteria used to determine the kind of products that do not benefit from the community origin lead to the types of good produced in SEZs. The protocol provides that:

- ...a) goods processed under special schemes involving partial suspension or total exemption from import duties on inputs cannot, in any case, enjoy the quality of originating industrial products and benefits that are attached;
- b) goods processed under economic or suspensive customs regimes do not enjoy the quality of originating industrial products and benefits attached thereto. However, they will benefit from the quality of originating industrial products and benefits attached thereto if the duties and taxes on the materials used in the manufacturing process are paid;
- c) an implementation regulation shall determine, after consultation with experts, the conditions of application of the above provisions relating to the products obtained under suspensive regimes.
- d) are not covered by the provisions of Article 8 a) and 8 b) the goods benefiting from procedures prescribed for products obtained from more heavily taxed than their finished product inputs.³¹²

Through this provision, it appears that WAEMU establishes a principle and an exception with respect to the way goods from SEZs should be regarded. According to this article, any goods produced under special schemes allowing tax and duty exemptions do not qualify to be regarded as products originating from WAEMU. In the case of the Mahatma Gandhi technological park in Côte d'Ivoire the companies in the zone benefit from a duty free and tax free schemes on all their import and export on the raw material used to produce goods and manufactured products. In application of this principle, none of the goods produced in this technological park will benefit from the certificate of origin for the purpose of exportation within WAEMU.

³¹² n 307 above, art 8.

Meanwhile, the exception in article 8d offers the possibility for goods from SEZs to benefit from the status of originating products. In fact, goods from SEZs made from inputs that were charged higher tax than the one levied on the final product qualify to be regarded as originating from WAEMU. The issue with this exception is that all the companies looking for SEZs to set up their factories want the application of the duty free scheme on their input to reduce costs to achieve more competitiveness on the global market. It does not make business sense for them to use inputs that are levied high tariffs; as a result they will not be able to benefit from this exception at all.

Another issue with this article is the provision in subsection c, it brings unpredictability with respect to the implementing regulation that will determine the conditions of application of the subsection a and b. There is a possibility for these conditions to make the rules more stringent than what is provided by article 8. Investors interested in investments in SEZs in Cote d'Ivoire will worry about that. Even those already operating in the Mahatma Gandhi Technological Park may feel that their opportunities in terms of market access will be threatened as well in the future.

Furthermore, the protocol set up a list of the kind of activities and operations that can in no case be used to qualify a product as originating from WAEMU. The additional protocol no I/2009 provides that:

...Notwithstanding the provisions of Article 5 of Protocol no III/2001 of 19 December 2001 establishing the rules of origin of products from WAEMU, operations hereinafter, may not, under any circumstances, give the third party products quality of products originating in the Union:

- operations to ensure the preservation condition of the goods;
- operations consisting of removal of dust, screening, sorting, classifying, matching, washing, painting, cutting;
- changes of packaging;
- breaking up and assembly of consignments;

- put in containers such as bottles, bags, boxes, etc., onlays labels or similar distinctive signs and all other packaging operations even if they affect the tariff classification of products;
- combination of two or more of the above operations;
- slaughter of animals;
- salting, brining, drying or smoking meat, fish, crustaceans, molluscs and shellfish;
- freezing of meat, offal, fish, crustaceans, molluscs, shellfish, fruits, vegetables and edible plants;
- preparation or conservation of meat, meat offal, blood, fish and shellfish from materials of Chapters 2 and 3 of the Tariff and Statistical Nomenclature of WAEMU;
- cutting, shaping sheet and strip of all kinds;
- simple mixing of products of the same species or different species;
- simple assembly of parts in order to constitute a complete article.³¹³

This list of activities and operations covers the broad range of activities that take place in SEZs. The fact the provision of the protocol emphasises is that they do not qualify in any case as originating product and it shows a strict restriction on the kind of operations to be undertaken in the SEZs by the enterprises. Consequently, that makes it more difficult for these enterprises to set up production chains that comply with the rules of origin as established, and benefit from the advantages accrued to the status of products originating from WAEMU.

4.5.3 Conditions for delivering the certificate of origin in WAEMU

The certificate of origin is the document which serves as a proof that a product manufactured within an RTA complies with the regional requirements to qualify as an originating product. When the goods are exported within the region, they need a certificate to be identified and beneficiate from the preferential treatment. In WAEMU the certificate of origin can be delivered only in two instances. Accordingly,

³¹³ n 307 above, art 9.

...The quality of products originating from WAEMU is conferred automatically on products satisfying the requirements laid down in Articles 4 and 5 of Protocol no III/2001 of 19 December 2001 establishing the rules of origin of products of WAEMU and Article 8 b) new above.³¹⁴

This provision of the protocol sums up clearly the requirement a manufactured good has to fulfil to be granted the quality of product originating from WAEMU. With the deliverance of the certificate of origin as a result of compliance with this article, the good can be marketed in WAEMU as product originating from the region when it is exported in another member country or cross the border of the country where it is produced. In such a case, the customs authorities at the different ports of entry will not collect any sort of duties on the exported good.

In summary, the regulation with respect to SEZs makes it almost impossible for goods from SEZs to be granted the certificate of origin in WAEMU for the purpose of selling within the region. Companies doing business in SEZs in Côte d'Ivoire should only rely on the quota which is given to each of them to sell on the domestic market. Nevertheless, these restrictions in regard to the certificate of origin apply to cases where the enterprises in SEZs want to have access to the domestic market as well as the regional market to trade their products. They have the possibility by the law to be given a certificate of origin by the customs authority in Côte d'Ivoire in instances where the goods are exported to countries which are not party to WAEMU.

4.6 The Economic Community of the West African States (ECOWAS) and SEZs

ECOWAS is a regional economic community (REC) located in West Africa. It was notified to the WTO under the enabling clause on 6 July 2005 as a Custom Union.³¹⁵ It gathers the following fifteen countries Benin, Burkina Faso, Cape Verde, Côte d'Ivoire, The Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone and Togo.³¹⁶ It was created in 1975 and it is the organisation in charge of promotion of economic integration in West Africa.³¹⁷ The treaty establishing the community was signed in Lagos, Nigeria on 25 May 1975,

³¹⁴ n 307 above, art 10.

³¹⁵ WTO, <http://rtais.wto.org/UI/PublicShowMemberRTAIDCard.aspx?rtaid=36> (accessed 27 April 2014).

³¹⁶ ECOWAS, http://www.comm.ecowas.int/sec/index.php?id=about_a&lang=en (accessed 27 April 2014).

³¹⁷ As above.

then revised on the 24 July 1993 in Cotonou, Benin.³¹⁸ ECOWAS deals with economic activities, particularly industry, transport, telecommunications, energy, agriculture, natural resources, commerce, monetary, and financial questions, social and cultural matters.³¹⁹ With respect to trade and customs, the objective of the regional community is to establish a common market in West Africa which involves the creation of a free trade zone and the institution of a customs union.³²⁰ The creation of the common market will lead to the suppression of customs duties and equivalent taxes trade among member countries and the establishment of a common external tariff covering trade between the members of the community and third parties.³²¹

4.6.1 Provisions applied to products from SEZs in ECOWAS

ECOWAS has recently harmonised its provisions covering rules of origin in the framework of the protocol relating to the definition of products originating from member states of ECOWAS. It should be noted that with regard to SEZs the protocol provides for non-recognition of their products as originating from the community. ECOWAS has a different approach in regard to the goods produced in free zones or under special economic regimes. According to the provision:

...Goods transformed within the framework of economic or suspensive Customs regimes or certain special regimes involving the suspension or partial or total exemption from Customs duties on inputs shall in no case be considered as originating products.³²²

Through this provision of the protocol, the community makes it clear that it is not willing to grant the willingness to grant the status of originating from ECOWAS to products from SEZs. There is no exception based on the fact the companies in the SEZs source their inputs from the member countries of the community, not even if the percentage of the local content is 100% from the ECOWAS. Although the protocol does not ban the products of the SEZs from being sold on the regional market it remains very protective. It has the triple objectives of affording high level of protection to domestic industries, increasing the possibility for taxes and duties collection on any products from SEZs entering the regional market and forcing the companies in

³¹⁸ ECOWAS, <http://www.comm.ecowas.int/sec/index.php?id=achievements&lang=en> (accessed 27 April 2014).

³¹⁹ n 316 above.

³²⁰ n 318 Above.

³²¹ As above.

³²² Protocol relating to the definition of the concept of products originating from member states of the Economic Community of West Africa, art 7.

the zones to export everything they produce. On one hand, the fact that the protocol is stringent will prevent the companies in the SEZs from competing with the local industries; it is thus a good means to induce SEZs stay export oriented because it will help to increase the exports and the trade performance of the host country. On the other hand the SEZs based companies can decide not to source their inputs from the regional suppliers since there are no advantages to do so. The issue with this lies in the fact the local industries will be disconnected from the companies in the zones; meaning that the transfer of knowledge and technology will never take place and thus creating a loss for the country that hosts the zone as well as for the whole region. In countries like China in Asia, the connection between SEZs based companies and the local industries was the basis of the rapid industrial development of the country; it is unlikely to be the case with such a provision in ECOWAS. In addition the enterprises outside the zones will not make new investments to upgrade their capacities so as to be able to supply the ones in the zones. As a result, job opportunities will be centred inside the zones only since there is no incentives for the companies operating outside to hire more staff members or create new types of job in relation with the activities of their zone based counterparts.

4.7 Potential impact of the combination rules of origin WAEMU-ECOWAS on SEZs

The fact WAEMU and ECOWAS provide for rules with regard to SEZs is common to all RTAs; there are diverse reasons that explain these kinds of more or less stringent provisions included in the framework of rules of origin. But it has to be noted that in some instance the rules of origin applied by RTAs can undermine the expectation and the prospects when a member country of these RTAs decides to establish SEZs programmes.

4.7.1 The rationale behind the provision governing SEZs in WAEMU and ECOWAS

RTAs always include in their regulatory framework specific provisions with regard to SEZs with the objectives of preventing trade triangulation, to attract FDIs in the territory, in support of the competitiveness of local producers and to promote regional economic integration.³²³

³²³ N Koyama 'SEZs in the context of regional integration creating synergies for trade and investment' in T Farole et al (n 53 above) 134.

In the first place, RTAs member countries worry about SEZs being used for the purposes of trade triangulation.³²⁴ SEZs based industries benefit from tax free and duty free schemes, in the case their products are allowed to enter WAEMU or ECOWAS' markets as originating products, there is a risk that SEZs could be used just to enter the custom territory. In such a situation, goods produced by companies located in countries not member of the customs union could be shipped into the SEZs without paying any tax and duty and then end up on the domestic market of the RTAs.³²⁵ By way of example, a company located in Singapore could open a branch in SEZs in Côte d'Ivoire just to have a physical presence in WAEMU and ECOWAS, then manufacture goods in Singapore with raw materials not sourced from Côte d'Ivoire and ship the finished products into the SEZs so that the local branch will sell them on the domestic and regional market with the label 'Made in Côte d'Ivoire'. Such a situation can result in a double loss in terms of duties and taxes collection for the host country of the SEZs since they will not be able to apply the tariff policy on the products entering into the zones then sold on the domestic territory.³²⁶

Secondly, by preventing trade triangulation, RTAs induce suppliers of SEZs based companies to invest in the territory of a member country.³²⁷ Indeed, when it is not possible for companies operating in the SEZs to just import finished goods and sell them on the domestic market, they invest more by creating manufacturing and processing plants in the host country.³²⁸ Then, to minimise their cost of production they will look for local suppliers who can provide the inputs needed in the first place. The quest for local suppliers has the positive effect of attracting other foreign or local investors who can set up outside the zones and supply the companies based in the SEZs.³²⁹ On the other hand new investors can even target other sectors of activities in the economy so as to take advantage of the large regional market offered by the RTAs.³³⁰ Another

³²⁴ N Koyama 'SEZs in the context of regional integration creating synergies for trade and investment' in T Farole et al (n 53) 136.

³²⁵ As above.

³²⁶ N Koyama 'SEZs in the context of regional integration creating synergies for trade and investment' in T Farole et al (n 35 above) 136.

³²⁷ As above.

³²⁸ N Koyama 'SEZs in the context of regional integration creating synergies for trade and investment' in T Farole et al (n 35 above) 136.

³²⁹ As above.

³³⁰ N Koyama 'SEZs in the context of regional integration creating synergies for trade and investment' in T Farole et al (n 53 above) 136.

issue is with RTAs that have provision of content requirement, or value added tax requirement like WAEMU, where the companies in the SEZs may even require its suppliers to set up in a member country so as to fulfil the content or value-added tax requirement to get the certificate of origin. In such a situation the goods produced will eventually be considered as originating from WAEMU and they will enjoy preferential treatment within the territory covered by the RTA.

Thirdly, local producers for example the ones outside SEZs have to be protected against their counterparts inside the SEZs. The companies inside the zones are more competitive compared to the ones outside because they benefit from many exemptions in terms of tariffs, taxes and other duties relating to their imported equipments and raw materials.³³¹ Further, SEZs based companies benefit from lots of financial and non financial incentives from the host government that constitute another huge competitive advantage for them.³³² All these incentives are not granted to local producers at all, and in the case the products from SEZs should enter the RTAs territory as originating products, the local producers will not be able to sustain the competition.³³³

Fourthly, regional economic integration is one of the key drivers of all RTAs and SEZs can threaten to some extent the achievement of the integration.³³⁴ Economic integration aims to interconnect industries of member countries of the RTAs to strengthen trade relations among themselves.³³⁵ In the case that SEZs based companies can supply the domestic industries with high quality equipments and inputs; they will do it at a cheaper price compared to local suppliers.³³⁶ Eventually, the local suppliers of the same products within the region that are not able to deliver the same quality at the same price to the costumers will lose business; and then the local industries will not trade among themselves anymore.³³⁷ Instead of sourcing their

³³¹ As above.

³³² N Koyama 'SEZs in the context of regional integration creating synergies for trade and investment' in T Farole et al (n 53 above) 136.

³³³ As above.

³³⁴ N Koyama 'SEZs in the context of regional integration creating synergies for trade and investment' in T Farole et al (n 53 above) 137.

³³⁵ As above.

³³⁶ N Koyama 'SEZs in the context of regional integration creating synergies for trade and investment' in T Farole et al (n 53 above) 137.

³³⁷ N Koyama 'SEZs in the context of regional integration creating synergies for trade and investment' in T Farole et al (n 53 above) 137.

equipment from their partners located in the member countries, the companies will rely on the products imported by the SEZs based enterprises.³³⁸ By way of example assuming in ECOWAS that a real estate company in Côte d'Ivoire was sourcing electric devices for the purpose of housing programmes from an enterprise located in Nigeria for a very long time. A new business then opens in the SEZs located in Ghana that produces the same equipments and offers better quality and price; obviously the real estate company will not buy anything from its supplier in Nigeria anymore. In a short period of time the real estate company will benefit but the Nigerian company will shut down because all its customers will go get good quality at the cheapest price from the SEZs supplier. As a result, ECOWAS will fail to achieve regional economic integration.

4.7.2 Possible effects of WAEMU and ECOWAS on the SEZs in Cote d'Ivoire

Companies operating in SEZs are already aware of the fact that they will be allowed to sell on the domestic market on a quota basis. That means that the issue for the companies is not to sell the whole production on the domestic market in Côte d'Ivoire, instead the reason why they might be interested into setting up their business in the country is to benefit from the West African market as an export destination.

The fact that two RTAs in the same region have quite different provisions about SEZs raises issues that investors always take into account before they make decision to set up a business in SEZs. Both RTAs reduce drastically market access in the region, and there is a sort of duplication of the regulation covering the SEZs that create unpredictability in the application of the regulation.

4.7.2.1 Drastic reduction of the market access for SEZs based firms

RTAs seek regional integration between member countries, by doing so, countries that are regarded as foreign markets are turned into domestic markets since they are now party to the customs union like WAEMU or an economic community like ECOWAS.³³⁹ In all the SEZs, companies are granted fiscal benefits and other incentives by the host governments because the

³³⁸ As above.

³³⁹ N Koyama 'SEZs in the context of regional integration creating synergies for trade and investment' in T Farole et al (n 53 above) 137.

purpose of the business is to export to foreign markets. But when the host country is part of too many RTAs within the region it reduces drastically the market access for the SEZs based companies in the neighbouring countries. The fact that neighbouring countries deemed to be export market are now regarded as domestic market puts more pressure on the SEZs based firm because they have to look for new markets to comply with the export requirement which vary from 70% to 80%, depending on the country. Then, in case their competitors based in other locations in the world are able to export in the regional market, they will lose business and will try to find a new location on a different territory so as to increase their competitiveness on that particular market.

By way of example assuming Côte d'Ivoire is party to WAEMU only. In case a company set up assembly facilities in the technological park in Côte d'Ivoire to produce computers with the objective of exporting part of its products to Nigeria which is the biggest market in West Africa and not member of WAEMU. They will be able to make enough benefits compare to their competitors that are located far from the Nigerian market, they will save on shipping costs because of the proximity and they will be more competitive since their goods will be cheaper than the ones from their competitors. It is thus, going to be easier for this company to meet its exports requirement. Assuming now, later on, that the ECOWAS treaty is in force and the economic community encompasses the whole West Africa, Côte d'Ivoire and Nigeria being included. By this time Nigeria is not an export destination anymore. Instead ECOWAS turned it into a domestic market. In such a case, the computer company will be able to sell only the quota of products that is allowed by the government of Côte d'Ivoire. As a result of this, the company will not survive such a reduction of market access for a long time and may think of leaving the technological park in Côte d'Ivoire to set up in a new location where they will be able to supply the Nigerian market from.

Consequently, the investors will always look at the possibility of market access before making the choice to set up their business in Côte d'Ivoire.

4.7.2.2 Duplication of regulations on SEZs in the same region

Both WAEMU and ECOWAS are the RTAs that govern trade in the West African region. These RTAs provide for the same regulatory framework with regard to rules of origin. Indeed,

WAEMU was the first to provide for rules of origin that cover some aspects of activities that relate to SEZs in the region; by 2003 ECOWAS has harmonised its provision covering rules of origin with those of WAEMU. The harmonisation was done through the ECOWAS protocol A/p1/1/03 of 31 January 2003 that governed the definition of the concept of the rules of origin and the provision to be applied to the industrial goods within the community.³⁴⁰

However, with respect to SEZs and their related activities, unlike WAEMU's additional protocol No I/2009/CCEG/UEMOA that provides that products from SEZs can be regarded as originating from WAEMU on the condition that they satisfy some requirements, the ECOWAS protocol makes it clear that products from SEZs must in no case be regarded as originating from the community.

Such contradictory provisions raise issues of duplication and confusion about the rules that really apply to products from SEZs within the region. In the first place, it creates duplication because for the same kind of products there are two pieces of legislation that apply. Then the applicable provisions are different from one treaty to another. From the perspective of an investor interested in setting in the SEZs in Côte d'Ivoire she or he can look at it as a technical barrier since one treaty makes it possible for the products from SEZs to be qualified as originating products while the other completely ban products from SEZs to benefits from this quality. For instance, assuming a company specialised in the production of electrical apparels which plans to set up a factory in the technological park in Côte d'Ivoire decides to source all its inputs from supplier located in Mali, that companies is even willing to pay all the taxes to meet the value added requirement of WAEMU so as to make its products benefit from the certificate of origin and eventually the preferential treatment. Then this company figures out that despite their products will meet the requirement of WAEMU to qualify as originating products, ECOWAS denies this quality because the products are made in SEZs. Investors are always careful when it comes to the rules that apply to their business. This company may decide not to set up in the technological park located in Côte d'Ivoire because it's a country where contradictory rules apply to its activity.

³⁴⁰ <http://www.etls.ecowas.int/> (accessed 29 April 2014).

Secondly, there is confusion since there is no mention about which one of the provisions prevails on the other in the application of the rules that govern SEZs in the region. Again investors interested in setting up their business in SEZs in Côte d'Ivoire would like to have a clear understanding of the rules that really apply; they may look at this combination WAEMU-ECOWAS rules as a trap because they can think that the government of Côte d'Ivoire makes use of the provision of WAEMU to screen market access as a bait to attract them and then when they set up factories and start production, the government may use the provisions of ECOWAS to prevent market access as promised.

4.8 Concluding remarks

The difficult co-existence between RTAs and SEZs is in the fact that their economic logics are different. In fact, as long as SEZs are fully export oriented, WAEMU and ECOWAS do not have any constraining effects on their success. But in developing countries, especially in Africa, market access is used as an incentive to attract companies to SEZs. And then, to protect domestic industries against the unfair competition of SEZs based firms, RTAs contain restrictive provisions and rules that govern trade of goods of SEZs within the region. In the case of Côte d'Ivoire, the fact the country is party to two RTAs that provide for divergent rules in regard to goods from SEZs will inevitably have a negative influence on the SEZs programmes in terms of attracting investors.

Chapter 5

Lessons for Côte d'Ivoire from East Africa and South Asia on harmonisation SEZs-RTAs

5.1 Introduction

In Chapter 5, this study has shown that Côte d'Ivoire is party to WAEMU and ECOWAS. It analysed the provisions of WAEMU and ECOWAS that deal with SEZs. It also examined the extent to which these provisions might affect the success of SEZs programmes in the country.

It is recognised that the relationship between SEZs and RTAs is problematic because both economic tools follow different objectives. Developing countries struggle to balance their SEZs policies and their commitments under the RTAs they are party to, and they still try to find the best equilibrium. Meanwhile there are some successful examples in Africa as well as in other part in the world where countries have adopted a regional approach to combine SEZs and RTAs as means to create rapid economic growth and sustainable development. Speaking about this, the East African Community Customs Union and the Indonesia-Malaysia-Thailand Growth-Triangle may serve as example of best practice in doing so.

5.2 SEZs in the framework of the East African Community (EAC) Customs Union

The EAC is a regional intergovernmental organisation which has as members, Kenya, Rwanda, Burundi, Tanzania and Uganda.³⁴¹ EAC extends over 1.82 millions square kilometres, with a population estimated to be about 141.1 millions in 2010; a GDP of \$99.8 billion and an average GDP per capita of \$727.1.³⁴² The treaty establishing the EAC customs union was signed in 2004 in Arusha, Tanzania, with the objectives of, among others, further liberalising intra-regional trade; promoting efficiency in production; enhancing domestic, cross border and foreign investments; promoting economic development and diversification in industrialisation in the community.³⁴³

³⁴¹ East Africa Community (EAC), <http://www.eac.int> (accessed 1 May 2014).

³⁴² EAC facts and figures reports 2013, http://www.eac.int/statistics/index.php?option=com_docman&Itemid=153 (accessed 1 May 2014).

³⁴³ Protocol on the establishment of the East African Customs Union.

Before the entry into force of the treaty establishing the customs union, each of the current members of the union were already involved in SEZs programmes that provided for different regulatory frameworks and various sets of incentives. Indeed, Kenya set up EPZs programmes ahead of the other members, under the EPZs Act in 1990, followed by Tanzania in 2002; later on Uganda, Rwanda and Burundi started their own SEZs programmes.³⁴⁴ Among all the members of EAC Kenya is recognised to be the country where the highest number of SEZs are located and Burundi as the one that did not really develop its SEZs programmes before the entry into force of the treaty.³⁴⁵

5.2.1 Harmonisation on rules of origin applicable to goods from SEZs in EAC

In 2005, when the treaty entered into force, the provisions on rules of origin in EAC strictly denied the qualification as originating from the customs union to the products manufactured in SEZs located in all the member countries in the Annex II related to rules of origin.³⁴⁶ By doing, so the Customs Union establishes only one piece of legislation that determines the status of the goods from SEZs. With the unification of the rules of origin that apply within the region, the Annex II on the Customs Union solved the key issue of the predictability about which rules of origin applies from one member country to another in the territory of the union. By way of example, if an investor plans to set up his business in SEZs in any of the member country; he will refer to the Annex II of the protocol on the establishment of the customs union because it is the only piece of legislation that deals with rules of origin in the whole region.

5.2.2 Method of harmonisation of SEZs policies in EAC

The harmonisation of the SEZs policies of the member countries is organised in the framework of the protocol on the establishment of the customs union. Indeed, the protocol fully supports the establishment of SEZs within the customs union so as to contribute to the economic development and industrialisation of the member countries.³⁴⁷

³⁴⁴ S Woolfrey (n 1 above) 16.

³⁴⁵ As above.

³⁴⁶ N Koyama 'SEZs in the Context of Regional Integration: Creating Synergies for trade and Investment' in T Farole et al (n 53 above) 142.

³⁴⁷ n 343 above, art 3.

On the subject, the protocol has incorporated in part (F) provisions governing export promotion schemes. In fact, these provisions list clearly the principles and the type of activities to be developed under export promotion schemes within the customs union.³⁴⁸ By way of example, in article 25 of the protocol, the parties stated that the main objective of the export promotion schemes is to produce goods for exports markets.³⁴⁹ They even committed themselves to limit sales of goods produced under exports promotion schemes to 20% in the domestic market of the EAC providing that all duties, taxes and other charges have been levied.³⁵⁰ There is a unique authority designated in every member country for the administration of the duty drawback schemes as provided by article 26 of the protocol. This authority shall administer the duty drawback schemes on the basis of the provision of the customs law of the community.³⁵¹

The harmonisation system goes even further to provides for the extent to which the member countries can grant duty and tax remissions to the SEZs based firms in their territory.³⁵² With respect to EPZs, the protocol describes in details the ways that inputs imported for the purpose of production of goods for export shall be treated by the customs and revenue services on duty in the EPZs in article 29. SEZs are included as well in the provision of Part -G-, article 31, with special coverage of freeports. The protocol emphasizes the role of freeports in trade promotion and facilitation and recognises them as means to accelerate development in the union.

For the purposes of implementation, the provisions of the protocol work along diverse coordination mechanisms included in the annexes.

5.2.3 Coordination of SEZs' activities in the framework of EAC customs union (Exports Processing Zones) regulations.

In the pursuit of the objectives of having SEZs programmes in the customs union that fully comply with the provision of the protocol on the establishment of the EAC customs union, a set of regulations were put in place through the Annex VII to the protocol.³⁵³ This Annex establishes

³⁴⁸ N Koyama 'SEZs in the context of regional integration creating synergies for trade and investment' in T Farole et al (n 53 above) 148.

³⁴⁹ n 343 above, art 25.

³⁵⁰ n 343 above, art 25.

³⁵¹ n 343 above, art 26.

³⁵² n 343 above, art 27.

³⁵³ Woolfrey (n 1 above) 16.

the uniform benchmarks upon which EAC member countries shall conduct their EPZs programmes, in such a way to guarantee ...*transparent, accountable, fair and predictable* EPZs development in all the member countries.³⁵⁴

The EAC customs union (Exports Processing Zones) regulations are the cornerstone of the all EPZs programmes in the union. First, they provide for a unified regulatory framework that applies in all the member countries in conjunction with the local legislation relating to EPZs.³⁵⁵ For the purpose of good execution and coordination, the regulations emphasise the establishment of competent authorities and set out clearly their powers and duties. These authorities have similar power and bear the same duties in all the customs union member countries.³⁵⁶ Secondly, the regulations contain the requirements for a business to be granted an operating licence and the kind of activities that can qualify for licensing. In addition they set out the conditions to fulfil to qualify as EPZs developers and operators; provisions on the power and duties of the developers and operators are also added. Thirdly, with regard to the EPZs based companies' inputs and outputs, the regulations are clear in how these should be treated. They also deal with the exemptions regime to be applied to all the stakeholders involved in EPZs programmes in the union, the provision about the exemptions even cover the procurement and purchasing of the stakeholders. Last but not least, the Annex VII also includes a zone's operational manual and provisions covering dispute settlement mechanisms.

In Africa EAC is the best example of harmonisation; this kind of initiative does exist in Asia as well.

5.3 Growth triangles in East Asia and SEZ: Example of the Indonesia-Malaysia-Thailand Growth Triangle (IMT-GT)

The growth triangle is a pure regional economic cooperation model sustained by strong political will and consistent private sector involvement.³⁵⁷ It consists of neighbouring member countries linking together pieces of land from their territories so as to create a common economic area

³⁵⁴ As above.

³⁵⁵ N Koyama 'SEZs in the context of regional integration creating synergies for trade and investment' in T Farole et al (n 53 above) 149.

³⁵⁶ As above.

³⁵⁷ http://www.dfat.gov.au/publications/pdf/gt_4.pdf (accessed 2 May 2014).

suitable for the establishment and development of industries.³⁵⁸ As in the case of SEZs, the area is demarcated on the basis of the comparative advantages it offers; the favourable regulatory framework and strategic positioning are key elements in attracting domestic and foreign investments.³⁵⁹ The rationale behind the establishment of the growth-triangle lays in the fact that the member countries agree to use these programmes to promote export oriented trade in such a way to generate rapid economic growth that they will benefit from.³⁶⁰

The Indonesia-Malaysia-Thailand Growth Triangle (IMT-GT) was created in 1993. It extends over fourteen (14) provinces in southern Thailand, 8 states in Malaysia peninsular, and the ten (10) provinces of Sumatra in Indonesia.³⁶¹ The IMT-GT is a high potential economic area covering six hundred and two thousand, two hundred and ninety three (602 293) square kilometres of lands and offering seventy two million (72) potential consumers.³⁶² The growth triangle encompasses regions with many economic complementarities, proximity as well as historical ties.³⁶³ It has to be noted that these regions covered are the less developed of the member countries. So the rationale for the IMT-GT is to significantly involve the private sector in the realisation of a rapid economic development of these regions.³⁶⁴ The main objective of the IMT-GT is to increase intra-IMT-GT and inter-IMT-GT trade and investment,³⁶⁵ with the vision to create '*a seamless, progressive, prosperous and peaceful sub-region with improved quality of life*'.³⁶⁶ To do so, the member countries have merged their efforts in the common framework of cooperation called: '*A roadmap for development 2007-2011*'.³⁶⁷ The framework contains the strategic thrusts of the roadmap as well as its anchor programmes, and then an action plan for execution, along with implementation mechanisms and arrangements; in addition there is a financing plan for the roadmap.

³⁵⁸ n 357 Above, 1.

³⁵⁹ As above.

³⁶⁰ n 358 above.

³⁶¹ Indonesia-Malaysia-Thailand Growth Triangle, <http://imtgt.org/About.htm> (accessed 2 May 2014).

³⁶² EENI business school, <http://en.reingex.com/IMT-Growth-Triangle.shtml> (accessed 2 May 2014).

³⁶³ As above.

³⁶⁴ n 361 above.

³⁶⁵ As above.

³⁶⁶ n 361 Above.

³⁶⁷ <http://imtgt.org/Documents/Books/roadmap-development.pdf> (accessed 2 May 2014)

5.3.1 Strategic thrusts and anchor programmes of the IMT-GT

In view of achieve the envisioned objectives, the member countries committed themselves to enhance their cooperation in such a way as to

*...facilitate and promote intra and inter IMT-GT trade and investment, promote growth of agriculture, agro-industry and tourism, strengthen infrastructure support and connectivity, address human resource development in addition with environment and natural resources management concerns, and then strengthen institutional support, including enhancement of public-private sector collaboration.*³⁶⁸

These strategic thrusts as identified, contribute to the creation of an accelerated and sustainable economic growth that will help in the reduction of poverty and the improvement of quality of life, along with peace and stability.³⁶⁹ The roadmap is based on two pillars that consist firstly of a common policy and regulatory approach so as to set up a quite attracting policy and regulatory system favourable to private sector activities in the IMT-GT.³⁷⁰ The second pillar consists of the creation of economic corridors; the development of transport and communication infrastructures will help to link together the parts of the IMT-GT with the objective of interconnecting all the industrial clusters as well as the major points of economic activities. These corridors aim to facilitate the movement of goods, capitals, people and vehicles.³⁷¹

5.3.2 Execution, implementation mechanisms and arrangements

For the purpose of an efficient execution of the roadmap, an action plan that contains the exact technical guidelines, the required programmes and projects, and the various implementation processes for each of the strategic thrust was established.³⁷² Indeed, the action plan provides with regard to every initiative, the kind of measures to be taken and the particular programmes suitable for the realisation of the objectives as well as the foreseen result.³⁷³ In addition to the

³⁶⁸ As above, 10.

³⁶⁹ n 367 above, 10.

³⁷⁰ As above.

³⁷¹ n 367 above, 15.

³⁷² n 367 above, 18.

³⁷³ n 367 above, 18.

indicators of progress and performance, the action plan determined the potential administrative body in charge to implement; coordinate and follow up the execution; and then the time frame for the full realisation of the task is indicated.³⁷⁴

The execution process itself is monitored by a coordination and monitoring centre (CMC) responsible for periodical evaluation and technical support.³⁷⁵ To keep the programmes moving forward, the CMC provides advice and recommendation to overcome the potential issues encountered during the execution.³⁷⁶ For more efficiency in the monitoring of the programmes and projects, the administrative structure of the IMT-GT will be adjusted accordingly.³⁷⁷

5.3.3 Financing plan

According to the study conducted in 1993-1994 by the member countries of the IMT-GT with the support of the Asian Development Bank (ADB), the execution of the whole roadmap within a period of 10 years in terms of investment costs was estimated at fifteen to twenty billions US dollars (\$15-20).³⁷⁸ Due to the huge amount of money needed for the implementation of the projects that the IMT-GT required, the stakeholders planned a financing approach based on the synergy of the member countries, the support of multilateral development institutions, the contribution of bilateral development agencies and an important involvement of the private sector.³⁷⁹ The private sector is regarded as a key partner in the realisation of the programmes and projects related to the realisation of infrastructures and other facilities contained in the roadmap.³⁸⁰ Together with governments of the member countries, diverse types of public-private partnership will serve for the realisation of these projects.³⁸¹

Concluding remarks

³⁷⁴ n 367 above, 18.

³⁷⁵ n 367 above, 21.

³⁷⁶ n 367 above, 21.

³⁷⁷ n 367 above, 21.

³⁷⁸ n 367 above, 23.

³⁷⁹ n 367 above, 23.

³⁸⁰ n 367 above, 23.

³⁸¹ n 367 above, 24.

The East African Community customs union in Africa and the Growth Triangles in Asia are both original approaches from developing countries to successfully harmonise SEZs programmes in the framework of RTAs to achieve economic development objectives. Through the establishment of common regulatory framework and monitoring mechanism for SEZs, the member countries of these RTAs found the best way to maintain all SEZs programmes within the region under control to avoid economic tension. In addition to the provision of quality infrastructure for interconnecting the economies, the creation of strong linkage between SEZs and domestic industries increase significantly trade and accelerate transfer of technologies. All these elements with an enabling environment to do business turn the whole region into an investment hub to attract FDI and realise sustainable and rapid economic development.

Chapter 6

Conclusion and recommendation

6.1 Research Problem

This research investigated how the RTAs Côte d'Ivoire is party to, WAEMU and ECOWAS might affect negatively the success of SEZs programmes in the country.

6.2 Summary of findings

In the process of this study, Chapter 2 discussed the concept of SEZs and the rationale for developing countries to establish such economic programmes. It has shown that SEZs are specifically delimited areas in the territory of a country. The legal and regulatory systems that apply to this micro territory are different from the ones in force in the rest of the economy. In addition they are deemed to be outside of the customs territory of the host country. The approach and the design of SEZs diverge from one country to another. They are related as Free Trade Zones, Exports Processing Zones, Free ports, Enterprise Zones and Single Factory Exports Processing Zones. In developing countries, the justification of the increasing number of SEZs is based on the needs to solve social, economic and development issues.

In the Chapter 3, the study covered the approach of SEZs in Côte d'Ivoire. It appeared that the government included SEZs in its new industrialisation strategy and plans to use them to increase the processing capacities of raw materials produced in the country and also to diversify its industries. So far, the SEZs programme is at its early stage, the Mahatma Ghandi technological park that started operations in 2004 and was officially inaugurated in January 2014 is the only zone in the country. Although this ambitious programme did not achieve the objectives expected, the government and its partner recently took actions in terms of reforms and new investments that should help in improving its performance. It has to be noted that the country lack the legal and regulatory framework for the development of other SEZs.

Chapter 4 shed the light on WAEMU and ECOWAS Côte d'Ivoire is party to and emphasised the provisions on rules of origin of these two RTAs that govern trade in West Africa. The study revealed that both RTAs are Customs Unions and that the rules applicable to goods from SEZs

by WAEMU seem to be less stringent than the ones applicable by ECOWAS. In WAEMU, goods produced in SEZs can be regarded as originating from the union and benefit preferential treatment within the region providing that they fulfil the listed requirements. Unlike ECOWAS that denies goods from SEZs to qualify as originating from the region. The study noted that the fact that Côte d'Ivoire is party to many RTAs within the region reduces the potential export market for SEZs based firms, in addition there is a contradiction in the rules applicable to goods from SEZs within the region. Although the WAEMU and ECOWAS are applicable in Côte d'Ivoire, there is no precision about which of the RTAs prevails on the other with respect to goods from SEZs.

In Chapter 5, this research did a comparative study of different approaches in harmonising SEZs programmes in the framework of RTAs to produce rapid economic growth and sustainable development at a regional level. Drawing example from EAC in Africa and IMT-GT East Asia, this paper has shown how member countries of these RTAs have established a benchmark for all the SEZs within the region, a common regulatory framework and monitoring system to ensure the compliance with the regional provisions. In addition to the provision of quality infrastructure, the member countries have established an enabling environment to turn the whole region into an investment hub.

6.3 Conclusion

The research revealed that WAEMU and ECOWAS provide for stringent and contradictory rules with respect to goods from SEZs. In addition, the fact that Côte d'Ivoire is party to both RTAs reduces the access to the regional market as potential export destination for SEZs based firms. So far WAEMU and ECOWAS do not have any impact on the Mahatma Gandhi technological park which is the only one FTZ in the country.

Meanwhile, Côte d'Ivoire has plans to establish many other SEZs in the country in the near future. In the situation where all these zones are operational, WAEMU and ECOWAS might be source of constrains only if the SEZs based firms are interested in supplying the regional market with their finished goods.

6.4 Recommendation

Côte d'Ivoire should draw example from the member countries of EAC and IMT-GT that successfully integrated SEZs policies in their RTAs to create rapid economic growth and sustainable development.

Côte d'Ivoire should address this issue in close collaboration with the member countries of WAEMU and ECOWAS. Indeed the member countries of both RTAs should take action to establish unified rules in regard to goods produced in SEZs. That should be done in framework of ECOWAS since it is the largest RTA in the sub-region. Then, ECOWAS should serve to harmonise SEZs policies by drawing lessons from the exports processing zones regulations in the EAC customs union that established a sound legal and regulatory framework for all the SEZs programmes in its member countries.

The member countries of ECOWAS should include SEZs in the framework of the West African industrial policy (WACIP) to create synergy between the development of domestic industries and SEZs. They should cooperate to build high quality infrastructures that will interconnect domestic industries and markets, these infrastructures should also serve to turn the whole sub-region into a platform from which SEZs based firm will supply the rest of the world.

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