

**TITLE**

**THE LEGAL AND POLICY FRAMEWORK FOR SPECIAL ECONOMIC ZONES AS  
AN IMPEDIMENT TO REGIONAL INTEGRATION IN THE SOUTHERN AFRICAN  
DEVELOPMENT COMMUNITY: A CASE STUDY OF ZAMBIA**

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**A Mini Dissertation Submitted in Partial Fulfilment of the Requirements for the Degree of  
Master of Laws (LL.M) in International Trade and Investment Law in Africa**

## 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.

Signed

.....

Jeremiah George Mulenga

## **ACKNOWLEDGEMENT**

First of all, my heartfelt thanks goes to God Almighty for His grace upon my life for without Him I would not have come this far. Secondly to my lovely family, my wife Mary Numba Mulenga, my daughters Kisha Mutale Mulenga ,Natasha Kaluba Mulenga and my sons Mwenya Mushimba and Mulenga Mushimba. You have been a source of my inspiration and thank for being understanding, having left you when you needed me most. I love you all.

To my late Father Donald Rueben Mulenga, who inspired me with his love for education, his great achievements and success. Dad, from you I learnt a lot never to give up, even in the hardest times. May his soul rest in eternal peace.

To my Mum, Agness Mutale Mulenga, my brothers and my sister's all the unmentioned relations that have been very instrumental in making it possible for me to have attained this level of education despite the enormous drawbacks of life, their support is the ultimate product of this work which would not have been possible without their support and natural love in nurturing me into a responsible person.

I also thank my sponsors ABSA bank for giving me this opportunity by giving me a partial scholarship to study this programme. Indeed, I would not have made it without this support and I will forever be grateful.

To all friends and relatives who supported this course, I thank you for making a difference in my life. I also thank all my classmates especially my friend Kimbeng and Fred, for making my stay at Pretoria memorable. I will always hold all of you dear in my heart for your understanding and support that made the journey bearable and a lot easier.

I am greatly indebted to Dr. Femi, my supervisor for devoting his time to this work by giving a valuable critique on my work and going through the scripts submitted to him and paying attention to details thereby thus giving the work substance and form.

## **ABSTRACT**

Zambia has Special Economic Zones (SEZs) which are locally called Multi Facility Economic Zones (MFEZ). These SEZs operate under the Zambia Development Agency (ZDA) Act of 2006. At the same time, Zambia is also an active Member State of the Southern African Development Community (SADC). SADC has its own protocol on trade known as the SADC Protocol on trade which was consolidated in 2014. It has generally been said the simultaneous use of SEZs and Regional Trade Agreements creates a complex situation in that conflict is created between SEZs policies which are created by individual countries as well as regional trade policies. This study investigates the legal framework governing Zambian SEZs and the legal framework overseeing regional trade within the SADC region. Where there is no harmony in SEZs and regional policies on trade, SEZs are likely to act as an impediment to regional integration. This study thus establishes the general conflicts that exists between SEZs and Regional Trade Agreements and offers recommendations on how the two can be harmonized to ensure that both tools are beneficial to all countries in the region.

## **LIST OF ABBREVIATIONS**

CMFEZ	Chambishi Multi Facility Economic Zone
COMESA	Common Market for Eastern and Southern Africa
CU	Customs Union
EAC	East African Community
ECOWAS	Economic Community of West African States.
FDI	Foreign Direct Investment
FIAS	Facility of Investment Climate Advisory Services
FTZ	Free Trade Zones
FZ	Free Zones
IDC	Industrial Development Corporation
KSEC	Kigali Special Economic Zone
LE-MFEZ	Lusaka East Multi Facility Economic Zone
LS-MFEZ	Lusaka South Multi Facility Economic Zone
LWSC	Lusaka Water and Sewerage Company
NAFTA	North American Free Trade Area
PPP	Public Private Partnership
PTA	Preferential Trade Agreement
RDA	Road Development Agency
RDB	Rwanda Development Board
RTA	Regional Trade Agreements
SADC	Southern African Development Community
SEZ	Special Economic Zone
SEZAR	Special Economic Zone Authority of Rwanda
UNCTAD	United Nations conference on Trade and Development
UNIDO	United Nations Industrial Development Organization
VAT	Value Added Tax

WTO	World Trade Organization
ZCCZ	Zambia China Economic and Trade Cooperation Zone
ZESCO	Zambia Electricity Supply Company
ZDA	Zambia Development Agency

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## **CHAPTER ONE**

### **1. GENERAL INTRODUCTION**

#### **1.1 Introduction**

Special Economic Zones (SEZs) are demarcated geographic zones situated inside a nation's borders where the rubrics for undertaking business activities vary from the rest of the country's territory. These rules include; administrative, regulatory and fiscal policy. SEZs always have different conditions for investing, customs, taxes, quotas, tariffs and international trade. SEZs have similar enticement packages as those found in Export Processing Zones (EPZ), however, the economic events in SEZs are more wide, extending across not only manufacturing activities but also to other economic activities such as tourism, trade, real estate development and agriculture.<sup>1</sup> Furthermore, SEZs aim to overcome hurdles that hamper investment in the broader economy, these hurdles include bad governance, poor and derisory infrastructure, obstructive policies as well as sticky access to land. From time immemorial, SEZs have been a vital policy tool for many governments in search of foreign direct investment (FDI), create employment and promote export-oriented growth. SEZs have grown in popularity over the past two decades due to their enormous and positive contribution to FDI and employment creation.<sup>2</sup>

The success attained by most SEZs in Latin America and East Africa has not been uniform. The success of SEZs has been generally reliant on particular framework in which they are presented and the effectiveness in how they are planned, executed, and operated. It is important to note that there have been cases where wrongly designed and implemented SEZs have totally failed to achieve their intended aims and objectives. Global familiarity has stressed the significance of both non-physical and physical elements tangled in nurturing the probability of triumph. The key success elements for SEZs comprise the availability of ports and airports, employees, geographic location of the zone, terrain, adequate support and infrastructure services for firms. The non-physical key success elements are linked to having a dependable investment atmosphere, comprising both

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<sup>1</sup> Consultancy Africa intelligence Special economic zones in Africa; China's economic model (2014) Weekly eleven journal

<sup>2</sup> FIAS Specific economic zones; performance, lessons and implications for zones development (2008) Washington DC

political and economic firmness, as well as well-organized governance system so that the SEZs can function with a lowest amount of bureaucracy.<sup>3</sup>

Furthermore, several states belonging to the Southern African Development Community (SADC) have created several SEZs as an economic strategy to enhance growth and development. A lot of research has been carried out SEZs and their contribution towards economic growth in different countries. However, it has been difficult to conclude whether these SEZs have had a constructive or undesirable impact on SADC countries, many significant questions remain unanswered. For instance, there has been absence of orderly, data-driven scrutiny on the operations of SEZs around the SADC region and the world at large. Therefore, legislators are frequently forced to depend on the same little information from case studies. Moreover, for SADC policymakers, there almost exists no comprehensive report on the operation of SEZs in the region.<sup>4</sup>

## **1.2 Background**

The first SEZs was created about seven decades ago, when the first hybrid SEZ was erected in Shannon, Ireland. This SEZ was established in a rural set- up and was made up of a Free Trade Zone and Industrial Park. The Shannon SEZ led to the establishment of more SEZs across the European continent in the mid-1960s. Furthermore, this innovation of SEZs spread to other different places across the globe including East and Southeast Asia and Latin America. Later, this idea of SEZs came to Africa. Sub Saharan Africa began to develop their own export processing zones programs. At the beginning, these SEZs were established as a tactic to deal with poor performance of the backward looking and highly protected economies. In the early 1970s, there was an unprecedented growth of SEZs across the globe, this was mainly due to the advancements of the world economy. This speed of growth further amplified in the late 1980s with new SEZs established in South Asia, Eastern and Central Europe and North Africa. Moreover, another noticeable occasion in the zone development in the 1980s was the increasing number of private

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<sup>3</sup> FIAS (n2)

<sup>4</sup> World Bank “exporting processing zones” Policy and research series ,No 20 (1992) Washington DC

sector involvement as compared to the previous periods were everything was under the control of the central government.<sup>5</sup>

Furthermore, by 1990 about 62 % of SEZs in emerging and intermediate economies were private sector developed and held as compared to 25 % in the 1980s. Another notable progress was the proliferation of formal Public Private Partnerships (PPP) participation in the establishment and ownership of SEZs. The growing involvement of the private sector in the establishment of SEZs was fundamentally due to the realization of the private sector that SEZs could generate massive profits for them. Additionally, it was highlighted that the increasing involvement of the private sector players in SEZs expansion and performance had led to momentous alterations in the variety of amenities and services offered inside SEZs and an extension of the liberalization of the organizational framework of SEZs. In figure terms, it was reported that in 1974 there were 79 recorded operational SEZs. By the year 2006, there were 3,500 operational SEZs in 130 countries. This number continued to increase and the statistics obtained in 2013 indicate that 4200 SEZs were operational across the globe with 2900 of these situated in Asia, the Pacific and Latin America. In terms of employment, historical special economic. In 2012, statistics revealed that SEZs had created over 68 million jobs world over.<sup>6</sup>

The SEZ plan has been quoted by many scholars as one of the trade and industry backbones of any state. Thus, Zambia has followed suit and created a number of SEZs namely the Lusaka South Multi Facility Economic Zone, the Lusaka East Multi Facility Economic Zone and the Chambishi economic zone. Simultaneously, Zambia is keenly chasing regional integration as one of its key instruments of economic progress and expansion. The nation is at present a member of regional bodies such as the Common Market for East and Southern Africa (COMESA) and SADC. The joint use of both SEZs and Regional Trade Agreements (RTAs) as instruments of economic progress and expansion is one which if correctly implemented can lead to collaboration of the two bringing forth particular gains leading to remarkable outcomes.<sup>7</sup>

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<sup>5</sup> World Bank World development indicators database , World Bank (2010) Washington DC

<sup>6</sup> Consultancy Africa intelligence (n 1)

<sup>7</sup> R N Kadam A big bang on Special economic zones on Indian economy; issues and facts (2012)

### 1.3 Research Problem

Special economic zones (SEZs) represent selected geographic areas within a nation where business activity is carried out. These economic zones usually have diverse rubrics from those prevailing in the rest of the nation or economy. These rules pertain to investment conditions, tariffs, quotas, trade, customs, taxes and prices. The most shared objective of SEZs around the world is to attract foreign direct investment (FDI) as a means of boosting exports and structural change of the economy. SEZs serve as “pressure controllers” to lessen massive unemployment and country to develop and diversify exports.<sup>8</sup> In addition, SEZs act as experimental test sites for the employment of fresh strategies and methods. The Southern African Development Community’s (SADC) main economic objective also conforms to this objective. SADC aims to improve the economies of member countries through Regional integration across member countries.<sup>9</sup> Zambia being a member of SADC implies that it has to comply with regional trade agreements approved by SADC member countries. However, a lot of scholars are cautious of simultaneous use of SEZs and RTAs stressing that the correlation between the two mechanisms is very multifarious. They contend that RTAs disturb the ability of their members to create SEZs within them and alters, considerably, the business atmosphere for the processes of SEZ initiatives. Correspondingly, the formation of SEZs in countries that are members of RTAs is as well likely to bring challenges and impending synergy for regional integration enterprises. A number of economic consultants have as well dispirited the creation of SEZs by emerging economies like Zambia because of their likely undesirable effects on regional integration enterprises trailed by such nations. Thus, a problem arises where legal and policy frameworks for SEZs act as an impediment to regional integration within the SADC region. Therefore, there is an urgent need to investigate how legal and policy frameworks affect economic regional integration and identify the suitable legal and regulatory approach by SADC to ensure collaboration and harmonization between SEZs and regional integration initiatives within the SADC region.

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<sup>8</sup> Kadam (n 7)

<sup>9</sup> L Kritzinger Regional integration concepts, advantages, disadvantages and lessons of experience (2008)

#### **1.4 Thesis Statement**

SEZs have ideally been used for numerous reasons, among these include; creating employment opportunities for the local people, developing modern infrastructure, encouraging exports of commodities and services, stimulating investment from foreign and domestic sources and generating additional economic activity. SEZs have the potential to expand the economies of SADC member countries especially if they are all designed under the same policy and legal framework across the SADC region. However, their policy and legal framework may act as an impediment to regional economic integration. Their policies may come in conflict with those of regional trade agreements such as those of SADC. Simultaneous use of SEZs and regional trade agreements may therefore bring numerous challenges, thus there is an urgent need to come up with proper statutory measures both regional and national level to ensure collaboration so that the SEZ programs do not weaken the advances of regional integration already made in the SADC region.

#### **1.5 General Objectives**

The primary objective of this thesis was to analyze the legal and policy framework for specific economic zones as an impediment to SADC regional integration.

##### **1.5.1 Specific objectives**

Specifically the study aimed to achieve the following objectives

- i) To evaluate the legal and policy frameworks regulating Special Economic Zones in Zambia.
- ii) To analyze the SADC protocol on trade and how Zambia's Special economic zones SEZs affect it.
- ii) To assess the suitable legal and regulatory approach by SADC to ensure collaboration between SEZs and regional integration initiatives within the SADC region.

#### **1.6 Central Research Question**

The subsequent question was the all-encompassing question in this research.

Is the policy and legal framework for Special economic zones in Zambia an impediment to SADC regional integration?

##### **1.6.1 Specific Research questions**

In answering this wide-ranging question, subsequent sub-questions were also answered.

- i) What are the legal and policy frameworks regulating Special Economic Zones in Zambia?
- ii) What is the SADC protocol on trade within the region?
- iii) How does Zambia's legal and policy framework on Special economic zones affect the SADC protocol on trade?
- iv) Does the legal and policy framework on SEZs act as an impediment to SADC regional integration?
- v) What should be the suitable legal and regulatory approach by SADC to ensure collaboration between SEZs and regional integration initiatives within the SADC region?

### **1.7 Significance of the Study**

This study is expected to widen the understanding of the efficiency and effectiveness of SEZs in meeting their targets. Also, the study will help to understand the impact of SEZs on the economy of Zambia and the surrounding region. Moreover, the research will help to understand if diverse legal and policy frameworks for SEZs in different SADC countries has been an impediment to economic regional integration, this will further give insight to SADC countries and the SADC board on how they can harmonize conditions in all SEZs in the SADC region so as to obtain optimum benefits from the SEZs which will be beneficial to all SADC member countries. Furthermore, the study will bring to light the literature on the topic of SEZs and will help other researchers who have an interest in the development of SEZs in Southern Africa and their contribution to economic development. Lastly, the study will also help relevant Government officials to find out the weaknesses and strength of SEZs and how they can improve.

### **1.8 Definition of Concepts**

According to Willes<sup>10</sup> legal framework is basically a set of rules, procedural stages, frequently established through precedent in the common law, through which judgment can be determined in a particular legal case. Furthermore, a policy framework is a document that sets out a set of goals which might be used in negotiations or decision making to guide a more detailed set of policies,

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<sup>10</sup> Willes J. Contemporary Canadian Business law; Principals and cases (9<sup>th</sup> ed) (2012). McGraw-Hill Ryerson.

or to guide ongoing maintenances of an organization's or country's policies.<sup>11</sup> A special economic zone is an area in which the business and trade laws are different from the rest of the country. Special economic zones are positioned within a country's national borders, and their aims include employment creation, increased investment, increased trade balance and increased investment.<sup>12</sup>

### **1.8.1 Theoretical Framework**

It is vital to note that SEZs have various names and forms due to the need to distinguish among kinds of zones that show very real dissimilarities in economic terminologies among countries, form and function and zone promoters' yearning to distinguish their creation from those found among competitors as well as consequences of multiple translations. Definitions of economic zones differ from nation to nation and institution to institution, and change unceasingly as fresh zones are established and older vanish or are reformed. Any endeavor at an all-inclusive description of SEZs must be adequately comprehensive to cover the perplexing assortment of older, current, and imminent zones, and yet satisfactorily exact to eliminate those that do not show the vital physical elements that make up an economic zone<sup>13</sup>.

An economic zone has three main structural features. First and foremost, SEZs are fundamentally, officially demarcated segments of the state territory and, less importantly, legal cosmoses given with a group of trade, investment and functioning rubrics that are more liberal and managerially well-organized than those prevalent in ordinary areas, that is, outside SEZs. Therefore, SEZs are well-defined by a particular supervisory regime.<sup>14</sup> This regime may be confined in one or numerous devoted laws or via a group of measures found in several manuscripts. Secondly, management of the regime normally call for an enthusiastic governance framework which are decentralized or vice versa. The characteristics of this framework differ in line with the nature of the zone regime, the prevalent administrative culture, the quantity of current SEZs, the part played by the private sector in forming and running SEZs as well as countless additional features. The

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<sup>11</sup> Technical Guidance to the National Planning policy framework. Archived from the original on 30<sup>th</sup> May 2012. Retrieved 24<sup>th</sup> may 2012

<sup>12</sup> "Zone definition," Special economic zone; Performance, lessons and Implication for zone development, Washington DC (2008).World Bank pp 9-11

<sup>13</sup> Kritzinger (n 9)

<sup>14</sup> The World Bank Special economic zones progress, emerging challenges and future directions (2011)



drive of this framework is to guarantee effective administration of the regime and see to it that investors gain from its provisions.<sup>15</sup>

Lastly, SEZs are frequently provided with a somatic infrastructure backing the events of the businesses and economic managers working inside them. This infrastructure ordinarily comprises roads, electricity, real estate, water, roads and telecommunications. The infrastructure is normally made up of mixed-use or industrial activity parks as well as strategic transport infrastructure linking the SEZ to important destinations such as markets and its sources. Furthermore, not all categories of SEZs will show each aspects at a go, even though prototypical SEZs like export processing zones have a tendency to show each of them.<sup>16</sup>

Another significant aspect of SEZs is the deliberate policy that informs their conception. SEZs occur due to their policy raison, that is, the social principles or profit they are anticipated to produce. SEZs are formed to produce or take part in the economic revolution of their host nations in a manner that is quicker or more efficient than would be the situation minus them. They are created to act as catalysts for development. Despite having varying structures, SEZs are created with similar goals, aims and objectives; SEZs are created in order to attract FDI.<sup>17</sup> Most fresh SEZ agendas, mainly in certain regions, such as the Asia, are intended to draw foreign investment. They also act as “pressure controllers” to lessen massive joblessness.<sup>18</sup>

The SEZs of the Dominican Republic and Tunisia are often quoted as case in point for SEZs that have not catalyzed theatrical structural economic alteration but have nonetheless stayed strong employment-creating strategies. Furthermore, SEZs are formed to support a broader economic transformation strategy. SEZs are simple tools allowing a country to create and diversify exports. SEZs are a method of decreasing anti-export partiality while maintaining protective barricades unharmed. SEZs of Mauritius, People’s Republic of China, Republic of Korea and Taiwan follow this pattern. Also, SEZs are created as test sites workrooms for the employment of fresh strategies and methods. China’s broad-area SEZs are typical cases. SEZs can be viewed to grant two key

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<sup>15</sup> Wilmore Export processing zones (2013) Stellenbosch

<sup>16</sup> Wilmore (n 12)

<sup>17</sup> P Warr Export processing zones (1989) the World Bank research observer

<sup>18</sup> Wilmore (n 12)

kinds of gains which can be grasped in the short and long-run, correspondingly; stationary economic gains are derived in the somewhat short-run via the employment of SEZs as tools of investment and trade policy. They are the outcome of apprehending the benefits from exchange and specialization, and comprise the luring of the generation of foreign exchange via exports, the creation of employment and the formation of economic value added.<sup>19</sup>

Moreover, dynamic gains are the longer term operational and developmental paybacks that may derive from SEZs. These incorporate the elevation of non-traditional economic happenings, solid and soft technology transfers, promotion of economic openness and the inspiration of native entrepreneurialism. Nationwide, SEZs are created with the aim of attaining constructive changes in the attractiveness of the nation or a county. The past three decades has seen an increasing focus inclined toward the lively input of SEZs to trade and industry reformation and their use a tool to boost attractiveness.<sup>20</sup>

The word special economic zone is equally the widest and the most defined to refer to the zones described above. Particularly, it is worthwhile from a definitional and strategy improvement viewpoint, as the words are themselves equally satisfactorily far-reaching and clear-cut. Special denotes the degree of difference of regulatory regime that differentiates the area from the established national economy. Also, economic points to the widest kind of businesses now permitted in zones, minus preconception concerning their focus and nature. Usually, SEZs comprise the subsequent categories; commercial free zones, exporting processing zones, free enterprise and free ports.<sup>21</sup>

Commercial free zones (FZs) are the most ubiquitous and the oldest form of SEZs, particularly underneath the bonded storeroom set-up found in the bulk of seaports and in certain airports. Free zones are normally in or closer to main international transport knobs and are often under the management of ports. Besides, they are normally separated from both the port's core region and the outside by walls, gates and fences due to the fact that they are found outside the nation's custom

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<sup>19</sup> E N Wolff The role of education in the post war productivity convergence among OECD Countries(2001)

<sup>20</sup> Wolff (n15)

<sup>21</sup> Wolff (n15) 132

zone. Additionally, their undertakings are restricted to trade-related procedures such as exhibitions, sales, warehousing, sales and storage, and light processing operations such as labelling, packaging, sorting and quality control.<sup>22</sup> On the other hand, export processing zones (EPZs) were first formed in 1950 so as to accelerate industrialization and industry-linked global trade in developing countries. Activities in EPZs were originally concentrated on export markets, investment was limited to foreign capital and most businesses were restricted to making of goods only. Since then, EPZs have and the kinds of business initiatives allowed have increased considerably.

Furthermore, Free Enterprises (FEs) is a variation on the FZ and EPZ where single enterprises are given FZ or EPZ status and permitted to be set-up in any place across the country or in a chosen section of the region. In certain nations some, FZs, FEZs and EPZs co-occur. Some countries such as the USA also provide some businesses with a free trade zone (FTZ) position known as subzone. This position relates to present businesses that desire to have the remunerations of the Free Trade Zones (FTZ) arrangement but whose shifting expenses are quite enormous or to fresh business initiatives which have a convincing cause not to locate in an existing FTZ. Additionally, Freeports are the biggest kind of all, as they incorporate extra huge percentages of the terrain, encompass rural and urban parts, and include huge transport services and amenities like airports and ports. Freeports can comprise the whole economic zones, the masses that reside and are employed in the same zones, and all the business activities that occur there. Moreover, they have the ability to contain or even overlap organizational and political units.<sup>23</sup>

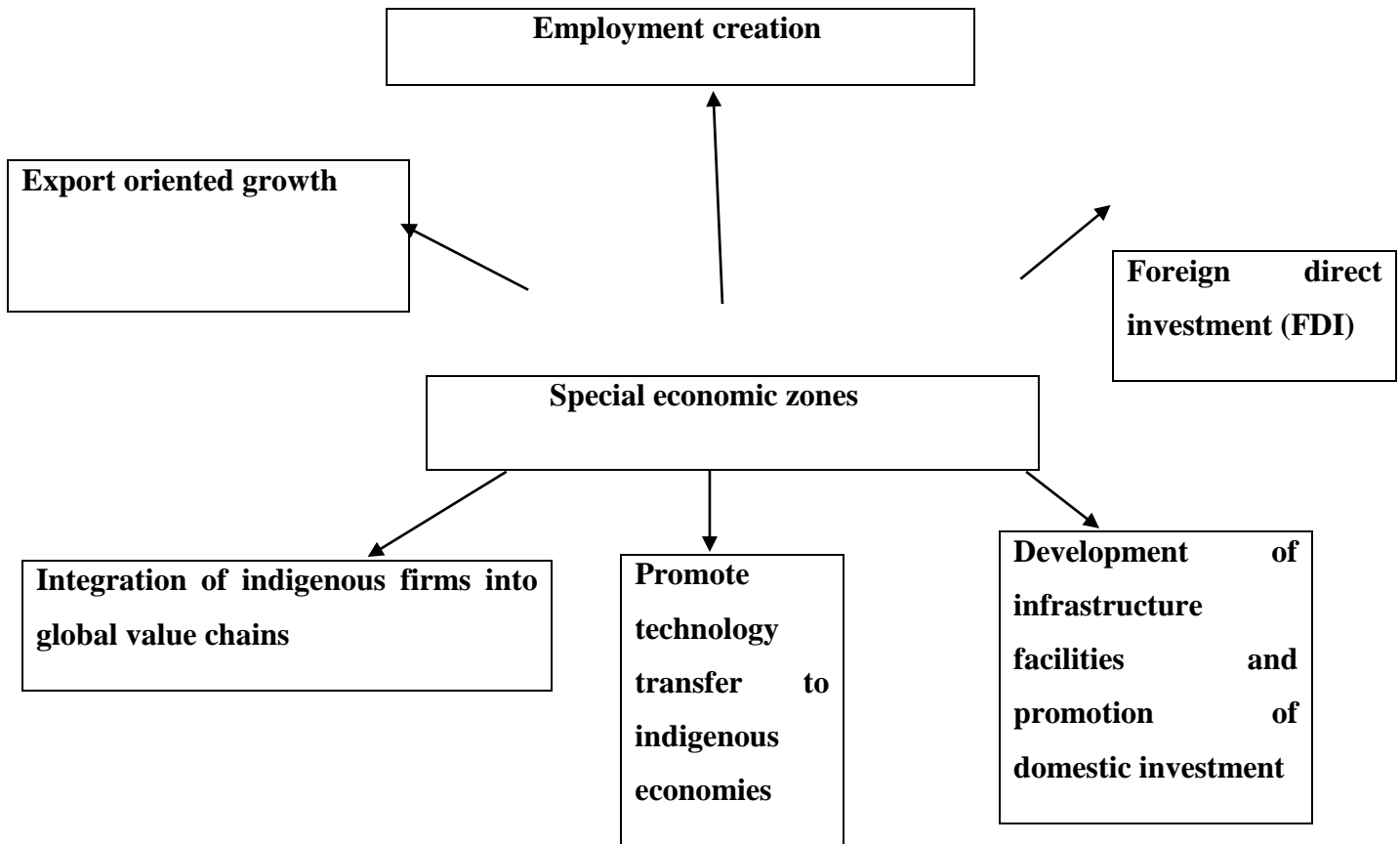
### **1.8.2 Conceptual Framework**

As discussed above, SEZs are formed in order to create employment, foreign direct investment and to accelerate export oriented growth. Besides, SEZs are created to integrate indigenous firms into global value chains, promote technology transfer to indigenous economies and to develop infrastructure facilities and promote domestic investment.

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<sup>22</sup> Wolf (n15) 167

<sup>23</sup> Wolf (n15) 169



## 1.9 Literature Review

### 1.9.1 Introduction

This chapter reviews the literature on the studies done on SEZs in Zambia and the SADC region, economic regional integration and other aspects surrounding SEZs. Thus, this chapter considers major debates regarding SEZs in Zambia, the SADC region and the world over.

### 1.9.2 Special Economic Zones around the World

Very narrow literature exists that give a detailed enquiry of the effects of merging regional integration and SEZs enterprises. Moreover, of the present studies or reports, none gives a painstaking investigation of African SEZs in the setting of regional integration regardless of the explosion of both Regional Integration and SEZs engagements in the land of Africa. However,

there is a common question that has been asked from the little literature that is available on Regional Integration and SEZ, this has to do with the suitability of SEZs and Regional Trade Arrangements (RTAs) and if there is vindicated economic logic for collective use of the two enterprises. To respond to this problem, a lot of writers have considered the sort of economic and legal encounters a nation is expected to encounter in using both creativities instantaneously. Sean Woolfrey asserts that the creation of RTAs affect the likelihoods for SEZ establishment in RTA Member States and deeply alters the business setting of SEZs. On the other hand, he came to an understanding that the presence of SEZs in states pursuing regional integration enterprises can bring about problems, he also asserted that the very idea has the ability to generate synergies for such RTA ingenuities.<sup>24</sup>

Woolfrey <sup>25</sup>also stressed that RTAs and SEZs are motivated by unpredictable logics which can generate boundless encounters for emerging economies like Zambia's. In his investigation, he stressed that emerging economies usually use enticements to draw FDI in their SEZs. Hence, if neighboring states who belong to the same are RTA, entirely have their distinct SEZs within their rims, they may resort to fighting or contending for the same investors via the application of enticements such as tax holidays, a notion referred to as "a race to the bottom" thus endangering their RTA. He further illustrates this scenario using the famous concept of a 'prisoner's dilemma' where neighboring countries would gain the most if they could collaborate on a regional level to eliminate their rival enticements but due to the fact that every country wants to gain more in isolation by being perceived to give the best enticement packages, they take a route of own self-centeredness. Such enticement-bidding conflicts, he notes, somewhat contradict the efficiency of the same enticements leading to a situation were competing states merely transfer rents to foreign stockholders. These kind of enticement conflicts are doubtful in terms of giving the entire region greater levels of investment as they are likely to lead to fights among RTA Member States thus negatively affecting the calls for regional integration.<sup>26</sup>

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<sup>24</sup> S Woolfrey Special economic zones and regional integration in Africa ( 2013) Tralac

<sup>25</sup> Woolfrey (n 19)

<sup>26</sup> Yeung et al China's economic zones (2009) Eurassian Geography and Economics

In 2006, Rwanda instigated its first two forms of SEZs namely the “Kigali Industrial Park” meant for domestic manufacturers, and the “Rwanda Free Trade Zone”, offering particular tax incentives to inspire exports largely to the neighboring countries of Kenya, Uganda and Tanzania. Being a member of the East African Community (EAC), the three main export markets became part of a single EAC Customs Territory, so that exports could no longer qualify for tax breaks. In 2009, it was consequently decided to combine the two zones under an amalgamated “Kigali Special Economic Zone” (KSEZ) Phase one and Phase two, whose users could benefit from the same infrastructural benefits for both export and internal sales. After this decision, the Government of Rwanda established an extensive policy and regulatory framework for SEZs as well as the current SEZ Policy. The SEZ law was approved in 2011, which amid other things formed the Special Economic Zone Authority of Rwanda (SEZAR) as the devoted regulator, lodged within the Rwanda Development Board (RDB). Other SEZ regulations were specified in other laws including the Land Law of 2013 for SEZ land proprietorship rights and the 2015 Investment Code linked to SEZ tax incentives.<sup>27</sup>

According to the SEZ Policy, the general aim of their legal and policy framework is to ensure the effective development of current SEZs and imminent SEZs so that SEZs can contribute meaningfully to the developmental goals of Rwanda whilst employing public resources in the most efficient and cost effective manner. The main policies of the Kigali Special economic zones are to increase foreign and domestic private sector investment, inspire export growth and diversification, and develop the manufacturing sector as well as employment creation. Furthermore, their policy framework is aligned in such a way that it achieves their objectives for the KSEZ such as skills advancement and technology transfers, environmental protection, increased tax income through base enlargement and an enhanced trade balance through increased production of internally consumed goods.

However, in his enquiry of SEZs in the Latin America, Granados asserted that a wave of transformation is raging and that certain rudiments of SEZs will be left behind either due to the fact that they represent a genuine and probable misrepresentation to global trade or investment

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<sup>27</sup> J Granados Export processing zones and other and other special regimes in the context of multilateral and regional trading negotiations

tides or because they are mismatched with several trade treaties that create customs unions or free trade areas.<sup>28</sup> Furthermore, Koyama<sup>29</sup> asserts that when both ingenuities are applied concurrently, they have the capability to produce substantial synergies. Conversely, he postulated that RTAs frequently come across difficulties in integrating SEZs in their supervisory frameworks grounded on the point that RTAs embody multilateral or bilateral tools while SEZs are tools by which a state stimulates investments and exports thus possibly creating conflicts with its rivals who happen to be RTA associates. Additionally, he stressed that numerous encounters might be encountered such as including “tariff jumping” where a foreign investor may jump over the tariff fence to escape trade expenses linked to tariffs. Likewise, because a lot of SEZs permit duty free admission of inputs from outside the RTA, there is a possibility of commodities flowing in the RTA without duty via a SEZ and then escape into the customs zone of other RTA members. In as much as stopping investors from exploiting the regional market can be a technique of lessening tariff jumping and associated encounters, this could inhibit member states from grasping the exact potential both SEZs and RTAs. Thus, there would be need to wholly leverage both of these two trade policies, members of RTAs have a task to come up with a cooperative tactic so as to harmonize their SEZ programs.

Additionally, Granados<sup>30</sup> stressed that there SEZs may act as an impediment to regional economic integration as they may cause apprehension between the legal and policy frameworks for SEZs in individual countries and the regulatory framework governing regional bodies such as COMESA. The reason for such apprehension maybe as a result of deflection of trade and absence of competitiveness of home-grown manufacturers. If commodities manufactured under subsidized settings in special regimes are permitted to move in the regional or local or market without duty, they would put indigenous manufacturers at a loss. Also, obstructive provisions on treatment of SEZs in regional trade agreements may contrary to broad opinion, help to lure FDI because such provisions would force additional regional traders who previously delivered inputs to producers

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<sup>28</sup> Granados (n27)

<sup>29</sup> N Koyama SEZs in the context of regional integration; creating synergies for trade and investment in special economic zones(2011) Washington DC

<sup>30</sup> Granados (n27) 86

SEZs to shift to the nation where the SEZ is situated because in not doing so, they would incur expenses on duties and import tariffs for them to supply SEZs producers.

Moreover, there have been strong arguments that SEZs and RTAs are driven by unreliable economic grounds. For instance, in the examination of the encounters faced by the North American in uniting a major Export Processing Zone (EPZ), Mexico's Maquiladoras within the conditions of a Free Trade Agreement, NAFTA, there have been conclusions that unless emerging economies are completely dedicated to competing in a world economy, policy makers in such states should be cautious in trying to merge SEZs their regional integration initiatives.<sup>31</sup>

### **1.9.3 Special Economic Zones in the SADC regions**

There have been numerous calls on countries in the SADC to come up with policies that will to enhance economic progress and infrastructure growth. Experts in economics have recommended that FDI can champion economic development in the long-run and lessen the dependency of SADC member state on bilateral and multilateral aid. Thus SEZs have been formed and are being formed to attract investments. A number of countries within the SADC region have come to realize that the creation of SEZs can be a stratagem for economic expansion. Nevertheless, strong debates have emerged on SEZs on the overall benefits which mount up to the host country from SEZs. Although there is a huge possibility of accruing gains in the long-run if the businesses functioning in these SEZs create modern buildings and roads as well as extra structural improvements.<sup>32</sup> Their legal and policy frameworks have somehow acted as an impediment to regional integration within the region. Moreover, tax enticements are at the focal point of SEZs' targeted at luring FDI. There are ongoing debates that tax exemptions result in gains mounting up for the nation of origin of the enterprises at hand and not the host nation. Offering tax exemptions to overseas businesses is synonymous to giving way the host nation's taxing privileges and has the potential to have a negative bearing on the development of the host country. Thus, many have argued that this does not only give respite to the overseas corporations but as well somewhat transfers an independent state's taxing privileges to the state of origin of those corporations.

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<sup>31</sup> T Farole Special economic zones, what have we learnt? The World Bank (2011) Washington DC

<sup>32</sup> Farole (n34)



#### **1.9.4 Special Economic Zones in Zambia**

The Zambian government introduced SEZs known as multi-facility economic zones (MFEZ) in fourteen years ago in an effort to boost the country's investment attractiveness which in turn would lead to economic growth. MFEZs were created with a view lure investors, stimulate export of goods and services, and augment trade within the country. The ordainment of the Zambia Development Act which authorized the formation of the Zambia Development Agency (ZDA) gives a principal framework for the supervision of investment expedition initiatives Zambia. Furthermore, the Act sanctioned the creation of MFEZs.<sup>33</sup>

At the moment, Zambia has 3 MFEZs namely the Lusaka East Multi-Facility Economic Zone also known as Zambia-China Economic and Trade Cooperation Zone (ZCCZ), the Lusaka South Multi Economic Zone (LS-MFEZ) and Chambishi Multi facility Economic Zone (CMFEZ). The LS-MFEZ is a public sector driven venture through which the Zambian government is establishing soft and hard infrastructures to back the expansion of the private sector.<sup>34</sup> It is prearranged and established with a robust public sector which involve the Zambia electricity supply company (ZESCO), Zambia telecommunications network (ZAMTEL), Lusaka Water and Sewerage Company (LWSC), Road Development Agency (RDA) and Industrial Development Corporation (IDC). The LS-MFEZ is roughly ten kilometers away from the Central Business District (CBD) and twenty one kilometers from the Kenneth Kaunda International Airport.<sup>35</sup> Also, it has an overall area of 2,100 hectares and has been planned to be established in five phases starting with Phase one in the North Eastern part of the zone where Chifwema entrance road has been built. The zone is a diversified industrial area encompassing industrial, residential and commercial developments. The envisioned sectors for the zone comprise education and skills training, electrical and electronic appliances, agricultural business, wrapping and printing, processing of palm oil, pulp and packaging boards, pharmaceuticals as well as research and development.<sup>36</sup>

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<sup>33</sup> LS-MFEZ Small and medium enterprises (2014) Lusaka, Zambia.

<sup>34</sup> LS-MFEZ (n33)

<sup>35</sup> LS-MFEZ (n33)

<sup>36</sup> LS-MFEZ (n33)

Besides, the Lusaka East Multi- Facility Economic Zone was the first SEZ to be created by the Zambian Government twelve years ago. As well, it was the first zone in Africa to have a trade and investment memorandum with China. It situated 25 kilometers north-east of the Central business district next to the Kenneth Kaunda International Airport. It is a multi-purpose facility which was created for indigenous firms as well as global business enterprises. The projected sectors consist of agronomy, international commerce, and processing of agriculture products, pharmaceuticals, building materials, brewery and logistics. The Chambishi Multi facility Economic Zone is just sub-zone of the Lusaka East Multi- Facility Economic Zone and became operational in the same year as the mother zone, which is in 2007. It is situated Chambishi town in the Copperbelt and is approximately 308 kilometers north from the capital city. It is as well a multi-purpose zone and open for all kinds of investors regardless of their origin. The important sectors of this sub-zone include mining, agriculture, construction materials, fertilizers, engineering kit assembly, and service sectors like hospitals and banking.<sup>37</sup>

The literature discussed above information on the origin of SEZs and how they have helped economies of certain countries like China. The literature also provides information on some selected SEZs in Zambia whose legal and policy framework will be critically analyzed in the report. Also, the literature provides an over-all exploration of possible encounters that are in the offering to nations seeking to develop their economies through the employment of both SEZs and RTAs. Conversely, this study will take a Zambian angle in that it will make an enquiry into Zambia's SEZs and how their legal and policy framework may impede economic regional integration.

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<sup>37</sup> LS-MFEZ “progress development of the Lusaka Multi facility economic zone” as at 15<sup>th</sup> December 2015 (2016)Lusaka Zambia

## **2.0 Research Methodology**

### **2.1 Introduction**

The main purpose of this chapter is to demonstrate the methodology to be used for the research and the approaches which will be used to collect the data, the sample size, sample selection and how the data will be analyzed.

### **2.2 Research Design**

Fundamentally, the study will be desk-top and library based. The writer will further use analytical, prescriptive and descriptive approaches in presenting this report. The analytical method shall be applied to give the general idea of the present and recommended statutory instruments for SEZs in Zambia whilst the descriptive approach will be applied in the scrutinization of the legal and economic battles that might ascend in Zambia's effort to employ both regional integration and SEZs as tools for promotion of trade and luring of investment. The writer will then use prescriptive approach to make necessary endorsements for required legal provisions and synchronization requirements that will ensure cooperation between regional integration initiatives and the planned SEZ program. Moreover, in coming up with recommendations, the writer shall make use of comparative analysis to determine the sort of legal provisions that have been successful in other jurisdictions like Mexico within the setting of North American Free Trade Agreement.

#### **2.2.1 Instruments for data collection**

The research will rely on both primary and secondary data. Primary data will comprise; Constitution of the Republic of Zambia and the ZDA Act No. 11 of 2006 under section 18 as well as the relevant Zambian fiscal laws. Secondary Data will be gotten from literature on SEZs such as journals, papers written by researchers and academics on matters applicable to the research, books, speeches and daily newspapers containing information relevant to the issues under discussion.

### **2.3 Outline of chapters**

This study will consist of five chapters.

Chapter one will give a brief outline of the study.

Chapter two will discuss the SEZ legal and policy framework working in Zambia.

Chapter three will focus on the SADC protocol on trade within the SADC region.

.Chapter four will analyze how the SEZs legal and policy framework affect the SADC protocol on trade within SADC region

Chapter five makes some concluding remarks for the study and also offers some recommendations.

#### **2.4 Limitation of the study**

The study will mainly rely on secondary data which might not meet some specific needs of this study.

The researcher may also face time limitations as he conducts his research.

#### **2.5 Assumption of the study**

The assumption of this study is that the legal and policy framework set out by SADC member countries to manage their SEZs normally contradicts or comes into conflict with the SADC protocol on trade within the region. Therefore, the legal and policy framework for SEZs in SADC countries like Zambia act as an impediment to economic regional integration within the SADC region.

## CHAPTER TWO

### SEZ LEGAL AND POLICY FRAMEWORK IN ZAMBIA

#### 2.1 Introduction

The legal and policy framework regulating Special Economic Zones (SEZs) is the Multi Facility Economic Zone (MFEZ) regulations and the Zambia Development Act (ZDA) of 2006. The Legal framework of Public Private Partnerships (PPPs) and taxation with regard to the SEZs' procedures will as well be analyzed so as to have a clear understanding of the current legal and policy framework.

ZDA is tasked to oversee the framework of SEZs in Zambia. Thus, this chapter will start by presenting the rubrics found in the ZDA Act which permit the establishment of SEZs in the country. Besides, the chapter will explain the expressions “investor” and “investment” and the criteria used to admit investors to SEZs with regard to Zambia’s RTA’s. Subsequently, issues relating to the administrations of SEZs as well as the structure of the ZDA board structure will be deliberated on. To close, the chapter will talk about the enticements that are relevant to SEZs.

First and foremost, it must be said that the ZDA Act promotes and regulates the admission of investment in Zambia. It seeks to accelerate economic development and growth by investment and trade using effective, coordinated and efficient private sector economic expansion policy. ZDA also facilitates exchange of ideas with the private sector and builds buoyancy in public sector backing for trade.<sup>38</sup> Therefore, apart from regulating SEZs, the ZDA Act also regulates other policies and features of investment directed at ensuring economic growth. Industrial Parks and MFEZ are the terms used to refer to SEZs under the ZDA Act. However, in this report, the two terms will be used interchangeably to mean the same thing.<sup>39</sup> The ZDA Act under section 18 gives power to the Minister of Commerce, Trade and Industry in Zambia to pronounce places as MFEZs or SEZs.

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<sup>38</sup> Preamble to the ZDA Act

<sup>39</sup> Preamble to the ZDA Act

The ZDA was created under the ZDA Act of 2006 and was tasked with the implementation of the Act. Among the functions of ZDA is to facilitate the development of SEZs by investors. ZDA also ensures compliance of investors to the laws relevant to the activities of SEZs as well as regulating and controlling of SEZs. ZDA is also there to stimulate efficiency and safety by enforcing rules for businesses carried out within MFEZs. In addition, ZDA is continuously exploring ways of fostering business connections like joint ventures, partnerships and other deliberate alliances in undeveloped areas of investments.<sup>40</sup> Thus, the importance of ZDA cannot be overemphasized due to its critical role in the creation and operation of SEZs.

According to the ZDA Act, any investor who wishes to establish a SEZ should apply using the prescribed procedure in the Act. An investor is defined as any individual of any origin investing in Zambia in line with the requirements found under the ZDA Act. The term investment has numerous connotations, conversely, for the sole purpose of this study, the meaning is found in the explanation under the ZDA Act.<sup>41</sup> Under the Act, investment is defined as contribution of capital, in kind or cash, by an investor to a fresh trade initiative, extension or reintegration of a prevailing business initiative or acquisition of a current corporate entity from the government. Therefore, the degree of investment is not restricted to fresh ventures only as it encompasses far-reaching developments being made through current projects and enterprises encompassing the privatization of previously state owned enterprises. Thus, the acquisition of a public project by a private venture capitalist dependent on other apposite contemplations could amount to an investment within the connotations of the ZDA Act.<sup>42</sup>

The establishment of SEZs can be driven by either foreign or local investors who are willing to fund new businesses or rehabilitate or expand current business initiatives from the government.<sup>43</sup> A business initiative can be described as any activity carrying on commerce in the arena of energy generation, transport, tourism, mining, skills training, information and technology, fishing and many other viable business ventures. Thus, it can be said that the contribution of resources should

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<sup>40</sup> ZDA Act (2006)

<sup>41</sup> Section 5(2)(o)-(r) and (w )

<sup>42</sup> Section 68(1)(a) ZDA Act and Regulation 6 of MFEZ Regulations

<sup>43</sup> ZDA Act (2006)

be via the practice of a venture undertaking business initiatives in the areas mentioned earlier.<sup>44</sup> Conversely, a scrutiny of Zambia's Sixth National Development Plan (SNDP) reveals that these fields are to the economic development of Zambia.<sup>45</sup>

Although the ZDA Act welcomes both foreign and local investors, it explicitly categorizes a local investor as an individual who has made or wishes to make investment in Zambia and is Zambian by origin, permanent dweller or corporation making investment in Zambia. Thus, it is understood that any native or juristic individual who lacks any of the mentioned benchmarks is classified as a foreign investor.<sup>46</sup> When talking about an investor, the Act does not particularly show difference between foreign and local investors, however, when some relevant Acts are put into perspective together with other investment correlated rubrics, the difference between the two invested is vivid. For example, a section to do with construction activities in the establishment of SEZs also follows some procedures and rules applied by the National Council for Construction (NCC).<sup>47</sup>

Thus, there may be a disparity in prerequisites subject to whether the corporation in search of a service is an indigenous or foreign competitor in the business. It must be noted that for most of the Sub-Sahara Africa, the main emphasis of NCCs is the indigenous industry.<sup>48</sup> Thus, mandatory foreign-local combined undertakings are taken as measures for opening up prospects for indigenous companies, mainly for larger foreign funded contracts. Furthermore, it seems that in so far as access to better prospects for development and establishment of SEZs in Zambia is concerned, the ZDA Act barely discriminates between foreign and local investors.<sup>49</sup>

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<sup>44</sup> Z Douglas Law of International Investment Claims(2012 )161-164 captures a discussion on the meaning of investment in various contexts

<sup>45</sup> Privatisation involves the transfer of ownership of property or businesses from a government to a privately owned entity. <http://www.investopedia.com/terms/p/privatization.asp> (accessed on 12 April 2014)It is thus submitted that the investing criteria concerning the purchase of a business enterprise by a private entity from the State under the ZDA Act falls with the scope of privatisation

<sup>46</sup> Section 3 ZDA Act

<sup>47</sup> Section 3 ZDA Act

<sup>48</sup> Section 9ZDA Act; Regulation 6 and 8 MFEZ Regulations

<sup>49</sup> S Brushett and S Seth Construction Industry Development and the Road Sector: Effectiveness of National Construction Councils (2005) 4

## **2.2 Admittance benchmarks and World Trade Organization (WTO) regime compatibility**

There are various deliberations that are put into consideration when an investor applies to set up a MFEZ. These deliberations differ in nature and comprise; the enhancement if economic expansion, degree of job prospects and human capital improvement of anticipated zone development, extent of export orientation of recommended zone expansion scheme, the bearing on the environment of the recommended expansion and where possible the recommended policies to tackle adverse ecological expenses and the likelihood of transfer of technology concomitant with the recommended zone enlargement .<sup>50</sup>

Excitingly, the “catch all” section seems to be a ration which authorizes the board of the Agency to put into consideration whichever deliberations it regards suitable in connection to a submission. Also, MFEZ Regulations contain some detailed considerations, some being a complete or mixture reiteration of the above-mentioned deliberations. Consequently, the deliberations to be emphasized under the regulations will only be to the degree that the identical are not alluded to previously. These considerations consist of; the levels and attraction of foreign and local investment, quality and amount of local creation, degree of skills improvement and transmission to indigenous businessmen and communities, degree to which project leads to growth of inland production, utilization levels of native raw materials and immediate merchandises, creation of fresh merchandises, degree to which the project leads to social development, branching out of the economy, improved foreign exchange remunerations and import substitution.<sup>51</sup>

It is agreed that certain deliberations for appraising a submission to form a SEZ seem to be some sort of performance necessities. Performance necessities are requisites enforced on investors, demanding them to attain some itemized areas with regard to their activities in the host nation accompanied with extra statutory instruments, like screening tools, trade instruments as well as incentives, to improve numerous expansion goals.<sup>52</sup> These sort of provisions are normally forbidden under the Trade Related Investment Measures (TRIMS) if these provisions are in defilement of Article III and XI of the General Agreement on Trade and Tariffs (GATT) under the

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<sup>50</sup> Section 69(1) of ZDA Act

<sup>51</sup> Section 69(1)(f)

<sup>52</sup> Regulation 8 of MFEZ Regulations



WTO regime, to which Zambia is a member. The banned procedures include the indigenous trade and content balancing requirements which disrupt Article III of GATT and, domestic sales and foreign exchange balancing which disrupt Article XI of the GATT.<sup>53</sup>

However, not every type of performance requirements proscribed under TRIMS, Regional Agreements and Bilateral Treaties (BITs) have as well progressively started to limit the application of performance requirements by host nations.<sup>54</sup> For example, in the case where an investor is a national of a country which has a BIT with Zambia in which certain deliberations under the ZDA Act are regarded to be proscribed performance requirements, a possible clash could emerge when there is lack of proper negotiation, perhaps, putting the investor in a complex position. Most of the performance requirements are only proscribed when submitted as a requisite for the attainment, management, conduct establishment and expansion of a covered investment. Presently, other deliberations relating to SEZs under the ZDA Act spread over to investors at creation stage whereas others apply in relation to criterion for inducements as will be explained later.<sup>55</sup>

Whereas the use of performance requirement must be prudently used so as to guarantee acquiescence with the regional and BIT policies as well as the WTO regime, arrangements covered within the range of performance requirements are crucial and significant for third world nations like Zambia. The justification for economic performance requirements rest on the target of the measure and if meritoriously administered and executed rules can be applied to stimulate economic growth in the host nation.<sup>56</sup> Validation wiles consist of the infant industry protection debate, social compensation debates that attempt to validate the application of rubrics to reward communities for the undesirable effects from the resource operations they suffer; the political harmony debate, which utilizes the policy as a way of settling conflicting resource communities; the market power debate, which validates the application of the strategy to guard underprivileged and feeble

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<sup>53</sup> UNCTAD Foreign Direct Investment and Performance Requirements: New Evidence from Selected Countries (2003) 2

<sup>54</sup> UNCTAD ( n 99 above) 1-2

<sup>55</sup> S Volks & P Douglas Achieving WTO Compliance for Special Economic Zones in Emerging economies (December 2010)

<sup>56</sup> UNCTAD Investment Policy Framework for Sustainable Development (2012) 12

businesses in the worldwide competition and lastly the tactical sectors debate that attempt to protect the economically complex segments.<sup>57</sup>

The extent of export orientation of the SEZ utilization of preferential trade treaties is not supposed to be ignored when a request to set up a SEZ is submitted. Specifically, in the instance of export preference, where performance of exports entices a subsidy, the endowment of the Subsidies and Countervailing Measures (SCM) might come into force under WTO regime when it comes to inhibiting trade misrepresentation. It is significant to note that WTO restraints only spread over to measures enforced by WTO affiliates that is, legislative measures. Currently, with the bulk of SEZs in private hands, measures enforced by private SEZ operators are not dependent on WTO restraints.<sup>58</sup>

### **2.3 Access to Regional Trade Arrangements (RTAs)**

MFEZs in Africa might become progressively eye-catching to foreign as well as domestic investors as the podiums from which to sell regional markets. The prerequisite tied to the utilization of preferential trade agreements is on one hand affirmative as this can inspire the transfer of technology and competition among participants within the SADC region. Furthermore, in view of the utilization of preferential agreements, the correlation between SEZs and RTAs is very difficult as the creation of RTAs affects the likelihoods of establishment of SEZs within RTA member countries and considerably changes the trading setting in which SEZ enterprise function. The presence of SEZs in possible RTA affiliate nations can generate equally probable synergies and challenges for RTA ingenuities.<sup>59</sup>

Besides, it has potential to generate difficulties as utilization of PTAs, typically encompasses a substantial phase of export undertakings, which may well be omitted by obstructive regional guidelines if the activities do not reach the allied threshold. Also, global forces have the potential

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<sup>57</sup> Woolfrey (n 36 above)

<sup>58</sup> Woolfrey (n 36 above) 14

<sup>59</sup> Latam & Watkins SADC Protocol on Finance and Investment :An underused Investment Protection Tool in Southern Africa(2013)

to state investment strategies as well as via regional amalgamation or global rivalry for the luring of particular kinds of overseas trade deals.<sup>60</sup>

Also, the application of regional policies is occasionally made complex due to the absence of flawless guiding principles in the specific preferential engagements on the handling of SEZs in SADC states. Zambia is a SADC as well as a COMESA State and both organizations have a single-minded schema to implement harmonized actions in investment, for instance, the SADC Protocol on Finance and Investment and the COMESA Common Investment Area correspondingly.<sup>61</sup>

The SADC protocol commands its members to co-ordinate their investment regimes and collaborate in forming a favorable investment atmosphere within the SADC Zone with fundamental investment protections. These include fundamental securities alongside provision for investors to institute adjudication measures directly against host countries to impose conferred rights under the protocol. In addition to this are the necessities, which hugely relate to corporate governance and capability and, concerning the financial and corporate standing of the investor. Principally, an individual planning to set up a SEZ must hand in a comprehensive business plan of the suggested facilities which include both the existing and proposed facilities setting out the full scope of the area to be industrialized as well as building restrictions.<sup>62</sup>

#### **2.4 Public Private Partnerships (PPPs)**

PPP activities in Zambia are driven by precise policies and their main aims include; setting up infrastructure and active conveyance of social services to ensure economic growth, wealth formation and enhanced competitiveness through policies drawing private sector investment and finance, reinforcement of conglomerates between foreign and Zambian companies as well as auspicious financial strategy that inspires further investment and elevation of active and well-organized distribution of community infrastructure and associated services via delivery of suitable enticements and minimization of costs and time in dispensation of PPP businesses.<sup>63</sup>

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<sup>60</sup> Regulation 4(1) MFEZ Regulations

<sup>61</sup> Regulation 6(1) MFEZ Regulations

<sup>62</sup> PPP Act

<sup>63</sup> Preamble of PPP Act

The strategy rules are backed by the Public Private Partnership Act [Act No.14 of 2009] which controls PPP activities in Zambia. The fundamental aim or objective of the PPP Act is to expedite and encourage the building of privately funded infrastructure developments and active distribution of social services by increasing fairness, transparency and long term sustainability; provide for public-private infrastructure conglomerate for erection and operation of new infrastructure facilities and structures; and provide for the employment of PPP treaties between contracting powers that be and concessionaires.<sup>64</sup>

Notwithstanding the presence of the PPP Act, in the setting of growth of SEZs, whether private, public or PPP basis, the ZDA Act is still the key supervisory statute. The PPP Act in expediting private sector involvement in PPPs not only permits for reply to demands for partnerships prospects but as well compliance of unsought offers for PPPs for deliberation and assessment after massive ads and for viable suggestions in connection to the unsought offer.<sup>65</sup> Besides, the assessment of such unsought offers takes into account things like the novel methods, methodologies or concepts revealed; scientific, socio or technical economic virtues; competences and allied experience, amenities or techniques of the private entity. In as far improvement of SEZs is concerned, the ZDA and PPP Act are accommodating to the private sectors stimulating creation of zones on own decision by either starting the procedure or retorting to a call for application and, reaching the appropriate standards.<sup>66</sup> The ZDA Act does not place any specific limit on kinds of SEZs to be established, nonetheless, it can be contended that deliberations appropriate to applications to grow SEZs are connected to the goals of the MFEZ policy, thus, such SEZs have to further the goals of the policy.<sup>67</sup>

## **2.5 Structure of the ZDA Board**

The composition of the board of the agency is in charge for general execution of the ZDA Act. The minister appoints the ZDA board which consists 10 representatives from the public sector and 2 to 6 representatives from the private sector.<sup>68</sup>

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<sup>64</sup> Section 5(1) (a)(b)(l)(k)(p) and (q) and 5(2) PPP Act

<sup>65</sup> Section 5 (1) (k) PPP Act

<sup>66</sup> Section 5(1)(w) ZDA Act

<sup>67</sup> Section 14 ZDA Act

<sup>68</sup> Section 6-7 of ZDA Act

## **2.6 Working in SEZs**

According to the ZDA Act, a person wishing to set up a business in a SEZ should apply for a license. Both foreign and local businessmen are eligible to apply and similar considerations to those stated above with minor changes apply in the assessment of applications for licenses. A remarkable provision is the description of kinds of enterprises that may operate under a SEZ license as either being a production or commercial business enterprise.<sup>69</sup>

The ZDA Act interprets a commercial business enterprise as a business with characteristics of a commercial business that falls within the range of a commercial activity benchmarks. Established business enterprise in MFEZs are banned from undertaking illegal activities, thus the business to be undertaken must be for commercial or production purposes and in line with the peculiar scope of authorization and rules found in the license. Businessmen are permitted to give the operations of the business enterprise to a representative or an agent. Likewise, businessmen with a legal permit are also permitted to give the administration and local management of the zones to chosen representatives or agents, lease, sublease or sell the land or building and charge rent and other applicable fees.<sup>70</sup>

Additionally, ceding, transferring or assigning of the permit and implementing developments to SEZs or its facilities are permitted though they are subject to ratification by the Agency. Nonetheless, investors with licenses are obliged to impose measures of encouraging safety of zone operations, efficiency and maintain of enough security as well as appropriate provision for movement of goods, persons, vessels and deliveries entering or leaving the SEZ.<sup>71</sup>

## **2.7 Exit approaches and dispute settlement**

The ZDA Act as well sets out exit methods for investors in SEZs. From commencement of the investment cycle, the investor is rendered a chance to inform the Agency of whichever encounters to do with the implementation of the conditions in the license. When it comes to dispute resolution,

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<sup>69</sup>Bannock Consulting Ltd Reforming the Business Environment; Mechanisms and processes for private-public sector Dialogue (2005)

<sup>70</sup> Section 1 ZDA Act

<sup>71</sup> Section 3 ZDA Act

where disputes related to investment are covered under the ZDA Act, investors may beseech provisions of the Arbitration Act for determination of the disputes.<sup>72</sup>

## **2.8 Incentive structure and DTAs**

The ZDA (MFEZ and Industrial Park) (Priority Sectors) (Declaration) Order of 2014 outlines the enticements valid to every SEZs investors. Critical to accessing the incentives is for an investor to have a legal license. Also, the benchmark relating to prerequisites for incentives under the customs, excise and income Acts is reliant on whether the investor has either prepared a huge investment of not less than USD 500, 000. It is postulated that the key investment standard includes the application of the minister's optional powers to outspread enticements to an investment. An important sector is one that has a great development capability and any merchandises considered as priority merchandises are to be interpreted in the same way. The sectors conscripted as priority sectors consist of; energy, manufacturing, water and sanitation, agriculture, housing and tourism the setting of building and setting up of massive infrastructure.<sup>73</sup> When it comes to manufacturing, particular reference is made to undertakings approved in SEZs. After a thorough scrutiny, it seems the areas of supremacy are inclined in the direction of the diversification programme of the MFEZ strategy or program, signifying that the spreading out various enticement packages is to have an eye-catching SEZ program.<sup>74</sup>

Where an investor is working in an important sector to the country and undertaking an enlisted activity under the sector, the minister's use of discretionary controls might not be essentially complex. The state of affairs may nevertheless be difficult for investments in a sector that is not so significant as the major investment threshold must be fulfilled if you are to meet the requirements for enticements. It must also be mentioned that the monetary starting point so as to be eligible for enticements on the ploy of a huge investment is not the same and much greater than that applicable in the situation of priority sectors. The major investment threshold consists of consultations with public officials concerning the Minister's use of discretionary authority to award enticements. Tax practitioners and Policy consultants argue that worthiness for enticements

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<sup>72</sup> ZDA Act (2006)

<sup>73</sup> [http://unctad.org/Sections/dite\\_pcbp/docs/bits\\_zambia.pdf](http://unctad.org/Sections/dite_pcbp/docs/bits_zambia.pdf) (Accessed on 30 April 2014)

<sup>74</sup> Schedule II of ZDA Act

as provided by the law nuts be grounded on flawless principles and not approved via exceptional authorization or official recognition by investment agencies or ministries as unblemished criteria methods guarantee quick verdicts and prompt reversal period critical to retaining and enticing investment.<sup>75</sup>

Information and criteria on the incentives must be available for public examination because inconsistency among investors in conferring enticements is injurious and misrepresents the business atmosphere and denotes an unbalanced playing ground. Various administrative challenges arise in relation to the awarding of enticements, for instance, the case awaiting before the High Court of Zambia in which a jurisdictional appraisal of the Minister's pronouncement to remove enticements is being pursued, in connection to enticements awarded to Varun Beverages Limited. The alleged enticements were awarded using the application of statutory decision by the minister but later scrapped off to the disadvantage of Varun notwithstanding the fact that actually fulfilled the main threshold benchmarks, attended to pertinent processes and got germane approval before beginning of the project that permitted for the request of incentives.<sup>76</sup>

Tax exemption duties are overseen by the Zambia Revenue Authority (ZRA) and are only in effect upon a firm being licensed. Section 61 of the ZDA Act acknowledges access to incentives investors may develop from Double Taxation Agreements (DTAs) arrived at between their countries of origin and the Zambian government and permits these permits to occur concomitantly with enticements that are appropriate to investments. This scenario gives an investor the chance to get maximum benefits from the enticements and welfares coming from both the DTA and the controlling charter. Nonetheless, this may correspondingly become expensive to the central government as it maybe misplacing extra revenue through awarding of enticements which do not have an adequate impact where a DTA or autonomous agreement warding enticements to an investor exists.<sup>77</sup>

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<sup>75</sup> Section 58 of ZDA Act

<sup>76</sup> Case pending judicial review of the Ministers decision to revoke the incentives granted to the investor under section 58 of the ZDA Act under cause number 2012/HP/196

<sup>77</sup> Taxes applicable under Customs and Exercise and Income Tax Acts as per section 56 of ZDA Act

Furthermore, in an event that the investment operating under the DTA minus tax sparing, that is, the country of origin representing the enticements presented by the host nation, tax breaks merely move tax earnings from the country in receipt of the investments to the home nation. Host countries incur an expense for possible benefits which cannot be realized much to the disadvantage of locals. The arrangement of enticements under the ZDA Act is generally fiscal inclined regarding relief and indemnities from taxes. This in some way oversees gains that can be attained by businesses from employment of non-fiscal enticements with regard to SEZs and diversification from mainly fiscal's enticements. Thus, it can be valuable for the executive to come up with mechanism giving a broken up assessment of any enticement -based- luring tactic's significance, appositeness and economic gains alongside their financial and additional expenses, as well as long-term bearings on resource distribution<sup>78</sup>.

Conversely, the contest for most SEZs in Africa is the transformation as well as the building of suitable sources of comparative advantage rather than depend on trade preferences, incentives and low wages which have practically not provided enough ground on which to whittle out a comparative advantage on the international market. The enticements under the ZDA Act are systematized to a level appropriate time period for shielded investments.<sup>79</sup>

## **2.9 Conclusion**

This Chapter tackled the meaning of the expressions 'investor and investment' under the ZDA Act and established that the Act does not differentiate in its provisions between foreign and local investors but that when interpreted with other investment related laws the difference may have functional significances.

Besides, the thoughts applied to SEZs were found to possibly bear a resemblance to performance requirements debated in the context of Zambia's BIT provisions, WTO TRIMS responsibilities highlighting possible encounters and third world countries' validations perspective. Likewise, contemplations relating to employment of preferential access and export inclination by the SEZs were spotted with a view to highpoint prospective activate points communicating to Zambia's

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<sup>78</sup> Farole (n 29 above)

<sup>79</sup>Zambia Revenue Authority Budget overview of Tax changes (2013) 5, para 12.9



WTO commitments where subsidies to exports are knotted to performance of export by the central government.

The possible rejection of gains to merchandises from SEZs in market places where the RTA framework has limiting access was deliberated noting the synchronization programme by SADC and COMESA where Zambia is a member state.

Owners of businesses in SEZs are given the right and obligations with regard to investment permits. The permits and licenses together with investor's obedience with the law and satisfaction of appropriate criteria were acknowledged as crucial in gaining access to enticements which were recognized as fiscal inclined with DTA access rendered to investors was found to be more expensive for the government than a policy to lure investors thus raising concerns for constant evaluation of SEZs enticements to make sure they are cost effective and appropriate.

It was further discovered that enticements encompassing the use of discretion are also classified by organizational hurdles that would normally be disadvantageous to investors as demonstrated by the Varun Beverages case unresolved before the Zambian High Court.

Also, investors are permitted to submit claims for arbitration. Moreover, possible repercussions could emerge in a case were a BIT or separate dispute settlement terms existing are pointed out hence weighing in on the cracks ascending under the ZDA Act. Having analyzed the issues concerning the SEZs in Zambia, our next chapter will focus on the SADC protocol on trade within the SADC region.

## CHAPTER THREE

### SADC PROTOCOL ON TRADE

#### 3.1 Introduction

Having discussed the policy and legal framework regulating SEZs in Zambia in the previous chapter, this chapter introduces the Southern African Development (SADC) protocol on Trade which governs the SADC Free Trade Area (FTA) of which Zambia is a Member State. The SADC FTA has been entering into action for a period of time. It was initially set to become fully functional by 2008, and it has gradually become more of a reality since 2008. This Chapter will look at the birth of SADC and the reasons behind its birth and some relevant Articles and annexes contained in the SADC Protocol on trade. These include elimination of import and export duties, quantitative import and export restrictions, protection of infant industries and preferential trade agreements as well as the coordination of policies with third countries. Thereafter, a conclusion shall be made regarding this chapter.

#### 3.2 The Southern Africa Development Community (SADC) Free Trade Area (FTA)

SADC was formed in 1992 by the Treaty of Windhoek, substituting the Southern African Development Co-ordination Conference (SADCC). Currently, SADC has 15 Member States namely; Zambia, Zimbabwe, Mauritius, Angola, Mozambique, Botswana, the Democratic Republic of Congo (DRC), Lesotho, Malawi, Madagascar, Namibia, Seychelles, South Africa, Tanzania and Swaziland. SADC's objectives are wide-ranging and extensive and comprise alleviating poverty and enhancing the living standards of the populace of Southern Africa by pressing forward the social and economic growth.<sup>80</sup>

A protocol is a legally binding diplomatic document agreed to in a conference and signed by the parties.<sup>81</sup> For a protocol to become active, two thirds of the Member States have to approve or sign the treaty, giving official approval and making the document formally in force. Any Country that is a member and has not originally become party to a protocol can consent to it at a future stage.<sup>82</sup> Additionally, for any kind of fine-tuning to be made to the SADC protocol on trade, any Member

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<sup>80</sup> SADC Community, University of Zambia (2014), UNZA Press.

<sup>81</sup> SADC Community (n80 above)

<sup>82</sup> Preamble of the SADC Protocol (2014)

State may recommend the amendment to the executive Secretary of SADC for initial contemplation by Council after all Member Countries have been alerted.<sup>83</sup> The amendment to this protocol can then be approved by a resolution of three quarters of the Member States of SADC. Moreover, if all the available diplomatic channels meant to resolve protests that may arise in the application of this protocol fail, the SADC tribunal can take up the matter to ensure it is resolved in harmony.<sup>84</sup>

Currently, SADC has twenty six protocols including those that have not yet entered into force and among these is the SADC protocol on Trade. This Protocol was ratified on 25<sup>th</sup> January 2000. It is a treaty among SADC Members that was meant to lessen levies, taxes and other hurdles to trade on imported merchandises from all members. The aims of this Protocol are;

- i. To promote the liberalization of intra-regional trade in services and goods on the foundation of mutually, impartial, beneficial and evenhanded trade engagements, perfected by Protocols in other fields.<sup>85</sup>
- ii. To guarantee production that is more effective within SADC reproducing the present and lively comparative advantages of its Members.<sup>86</sup>
- iii. To expedite the upgrading of the climate for foreign, cross-border and domestic investment.<sup>87</sup>
- iv. To improve the economic growth, branching out and industrial development of the Region.
- v. To create a Free Trade Area in the SADC Zone.<sup>88</sup>

By removing and reducing levies, taxes and other hurdles to trade, SADC states anticipate encouraging and stimulating regional integration and economic development. Thus, by 1<sup>st</sup> January 2008, most levies (on 86% of tariff charges) had been removed for merchandises coming from SADC states. The SADC aims to create a customs union in which all SADC states will have no

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<sup>83</sup> Preamble of the SADC protocol (n82 above)

<sup>84</sup> Preamble of the SADC Protocol ( n82 above)

<sup>85</sup> Guidelines to the SADC Protocol on trade (2009)

<sup>86</sup> Guidelines to the SADC Protocol on trade (n 85 above)

<sup>87</sup> Guidelines to the SADC Protocol on trade (n 85 above)

<sup>88</sup> Guidelines to the SADC Protocol on trade (n 85 above)

duties on goods originating from members within the SADC region and have a shared external tariff.<sup>89</sup>

In August 2008, the Members of SADC consented to the Protocol on Trade, these were; Botswana, Angola, Madagascar, Lesotho, Mauritius, Malawi, Namibia Mozambique, South Africa, Tanzania, Swaziland, Zimbabwe and Zambia. Angola, conversely, had not yet presented its programme of tariff discounts for merchandises coming from SADC states.<sup>90</sup> The Seychelles and DRC and had not yet consented to the Protocol on Trade of the region. The SADC Protocol on Trade is one of SADC's agenda of regional integration, which main aim is to benefit all members by stimulating economic growth in the SADC zone.<sup>91</sup>

Article three<sup>92</sup> of the SADC protocol on Trade deals with the modalities and procedures for the phase removal of tariffs and NTBs. According to the article, modalities and procedures for the phased abolition of tariffs and NTBs will be tabled before the Committee of Ministers for Trade matters (CMT) having due respect to the following;<sup>93</sup>

The current preferential trade arrangements between and among the Member SADC.<sup>94</sup>

That the abolition of barricades to trade will be achieved within a time frame of eight years from admission into force of this Protocol.<sup>95</sup>

That diverse tariff charges may be used inside the approved period of time for various merchandises, in the course of removing NTBs and tariffs.<sup>96</sup>

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<sup>89</sup> Guidelines to the SADC Protocol on trade (n 79 above)

<sup>90</sup> Guidelines to the SADC Protocol on trade (n 79 above)

<sup>91</sup> Guidelines to the SADC Protocol on trade (n 79 above)

<sup>92</sup> Guidelines to the SADC Protocol on trade (n 79 above)

<sup>93</sup> Guidelines to the SADC Protocol on trade (n 79 above)

<sup>94</sup> Guidelines to the SADC Protocol on trade (n 79 above)

<sup>95</sup> Guidelines to the SADC Protocol on trade (n 79 above)

<sup>96</sup> Guidelines to the SADC Protocol on trade (n 79 above)

The procedure and technique of removing barricades to intra-SADC trade as well as the method of listing commodities for exceptional scrutiny will be discussed in the perspective of the Trade Negotiating Forum(TNF).

That Member States which are of the view they may be or have been affected in a bad way, by elimination of NTBs and tariffs to trade may, upon application to CMT, be given a grace period to afford them extra time for the abolition of tariffs and NTBs. CMT shall further elaborate suitable time criteria for the consideration of such requests. A grace period shall be implemented in a way that does not discriminate between Member States. Besides, it will not be used to tackle fiscal budget or superfluously safeguard native industries. Hence, were a SADC State requests for grace period for more than one merchandise or tariff lines, Individual requests shall be made for different merchandises or tariff charges.<sup>97</sup>

Upon ratification of grace periods by CMT, a country given a grace period will submit yearly reviews drawing standing of the industry at hand, headways on instigating measures to counter the measures necessitating application for grace period as well as headways on implementing the verdict of the CMT.<sup>98</sup> Extensions maybe out into consideration only in unique situations and will be approved only once. On the other hand, a country may not make new submissions for grace period for merchandises that have were once given a grace period under this Annex. Also, any application for grace period exceeding three years shall not be sanctioned.<sup>99</sup>

### **3.3 Elimination of import and export duties**

In line with Article 4 of the protocol, there will be phased discount as well as ultimate abolition of import levies, in accordance with Article 3 of this protocol, on goods coming from Member Countries.<sup>100</sup> This procedure should go along with an industrialization mechanism to increase competitiveness of SADC States. The CMT shall approve such procedures as may be crucial to expedite amendment rising from submission of this Article. Furthermore, the CMT shall periodically analyze such measures. Member states will not increase import duties past current

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<sup>97</sup> Article 2, SADC Protocol on trade(2014)

<sup>98</sup> Article 2(n 84 above)

<sup>99</sup> Article 2(n 84 above)

<sup>100</sup> Article 4, SADC Protocol on Trade(2014)

ones at the time of entry into force of this protocol. Nonetheless, this Article will not spread over to dues and akin duties commensurate with expenses of any services given.<sup>101</sup>

In accordance with Article 5 of this protocol, SADC States shall not spread over any export levies on merchandises for export to SADC States. Conversely, this Article will not preclude countries within the region from charging export levies required to preclude corrosion of any bans or boundaries, which relate to exports going to different regions, given that no less favourable handling is given to members of SADC than to third States.<sup>102</sup> Apart from as provided for in this protocol, countries will, in relation to intra SADC trade; approve guidelines and enact measures to abolish all current types of NTBs and abstain from enforcing any fresh NTBs.

### **3.4 Quantitative import and export restrictions**

Article 7 of the SADC protocol states<sup>103</sup> that all SADC States shall not engage any fresh quantifiable limitations and will not in line with Article 3, phase out present boundaries on the import of merchandises in Member Countries, apart from where otherwise provided for in this protocol. Notwithstanding the necessities of this Article, countries in the region may engage a quota structure given that the tariff charge under such a quota structure is more favorable than the charge used under this protocol.<sup>104</sup>

Moreover, Member Countries shall not engage any quantitative boundaries on exports to countries within the region, excluding where otherwise provided for in this Protocol. Member Countries may take such actions as are essential to preclude wearing away of any bans or restraints which relate to exports to external regions, guaranteed that no less favorable treatment is given to countries in the region compared to third states.<sup>105</sup>

### **3.5 General and security exceptions**

Security exceptions depend on the prerequisite that these kind of measures are not spread out in a way that would set up a means of haphazard or uncalled-for favoritism between SADC States, or a camouflaged restraint on trade within the SADC region, nothing in Article 7 and 8 of this

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<sup>101</sup> Article 3 (n 87 above)

<sup>102</sup> Article 5, SADC Protocol on trade(2014)

<sup>103</sup> Article 7, SADC Protocol on trade (2014)

<sup>104</sup> Article 7 (n 90 above)

<sup>105</sup> Article 7 (n 90 above)

Etiquette shall be interpreted as to preclude the implementation of any actions by a SADC State that;

- i. Needed to uphold public order or to safeguard public morals.<sup>106</sup>
- ii. Needed to safeguard human, animal or plant life or health.<sup>107</sup>
- iii. Needed to secure submission to laws and guidelines which are unfailing with the provision of the WTO.<sup>108</sup>
- iv. Needed to safeguard intellectual property rights or to preclude misleading trade practices.<sup>109</sup>
- v. Relating to transfer of silver, gold and semi-precious stones, together with strategic and precious metals.<sup>110</sup>
- vi. Enforced for the security of national possessions of archeological, historic and artistic value.<sup>111</sup>
- vii. Required to preclude or to relieve precarious dearth of foods in any exporting country within the region.<sup>112</sup>

Furthermore, article 10 of the protocol states that there is no rubric in the protocol which will preclude any country within the SADC region from coming up with measures seen as essential for shielding of its wellbeing in terms of security or for its resolve of upholding unity and peace. However, countries with such concerns will have to alert the CMT if there are such issues at hand.<sup>113</sup> Also, Member countries shall accord, instantly and unreservedly, to merchandises sold within the region the same treatment as to merchandises produced at a national level without disregarding any laws, guidelines and necessities affecting their internal scale, purchase, offering for sale, distribution, shipping or use.<sup>114</sup>

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<sup>106</sup> Article 8, SADC protocol on trade(2014)

<sup>107</sup> Article 8, SADC protocol on trade(2014)

<sup>108</sup> Article 8, SADC protocol on trade(2014)

<sup>109</sup> Article 8, SADC protocol on trade(2014)

<sup>110</sup> Article 8, SADC protocol on trade(2014)

<sup>111</sup> Article 8, SADC protocol on trade(2014)

<sup>112</sup> Article 8, SADC protocol on trade(2014)

<sup>113</sup> Article 11, SADC protocol on trade(2014)

<sup>114</sup> Article 11, SADC protocol on trade(2014)

### 3.6 Other trade related matters

Annex IV of the protocol states<sup>115</sup> that no individual will give surety under the transit regime except in a situation where the powers that be in that SADC State where the individual is domiciled lists such an individual as guarantor. Every guarantor will commence to expedite the transfer via the banking arrangement, of the funds significant for the imbursement of import taxes and duties by labelled representatives under the necessities of this annex. Besides, the guarantor will provide in writing a task which has to pay the taxes and some extra fees acquired during the process of transportation in the SADC States of conveyance and such a task by the guarantor will severally and jointly endure the legal responsibility with the bondholder, principal and the labelled representative protocol, relish the freedom of transit inside the region and will only be dependent on the imbursement of the standard charges for the services offered.<sup>116</sup>

Member States will base their phytosanitary and sanitary rubrics on international criterions, recommendations and rules, so as to blend phytosanitary and sanitary measures for livestock and production in agriculture as well as safety of food. Countries in the region will, upon making an appeal, enter into discussions with the goal of accomplishing treaties on the acknowledgement of the uniformity of particular phytosanitary and sanitary measures in line with the WTO treaty on the implementation of phytosanitary and sanitary measures.<sup>117</sup>

According to Article 17 of this treaty, each country in the region shall apply significant global ideals as a ground for its standards-related measures, unless in a case where principles would be unsuccessful or unsuitable way to achieve its sincere goals.<sup>118</sup> Measures to do with standards that are in uniform to a global standard will be alleged not to generate needless hindrances to trade. Without reducing the level of protection, or of safety of animal, human or plant health or life, or consumers or the environment, with no preconception to the rights of any Member Country and considering global standards, Member Countries shall, to their greatest degree possible, create well-matched their particular standards-related measures, in an effort to accelerate business within the SADC region. The Article further states that a SADC States will, upon appeal of any other

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<sup>115</sup> Annex IV, SADC Protocol on trade(2014)

<sup>116</sup> Annex IV (n96 above)

<sup>117</sup> Article 16, SADC protocol on trade (2014)

<sup>118</sup>Article 17, SADC protocol on trade (2014)



country within the region, seek through suitable measures to uphold the uniformity evaluation techniques that are upheld in the land of other states in the region.<sup>119</sup>

Article 18 states that nothing will preclude any country within the region from executing anti-dumping policies which do not go against the WTO guidelines.<sup>120</sup> Yet, Article 19 forbids countries from granting subsidies which have the potential to impede economic regional integration.<sup>121</sup> However, a SADC State is at liberty to apply some subsidies according to Article 3 of the protocol.<sup>122</sup> A nation may also charge countervailing duties on a commodity of another SADC State so as to counterbalance the impacts of subsidies. Nonetheless, these duties must not violate WTO guidelines.<sup>123</sup> Notwithstanding the elements of this Article, a country is further at liberty to come up with a fresh subsidy provided it is still in conformity with WTO guidelines. Besides, Article 20 states that a nation may enact measures to safeguard a commodity in some extreme cases, for instance, if a country has discovered that commodity is being trade in to its area in such bigger numbers, relative or absolute to local production, and under such circumstances as to cause or threaten to cause severe damage to the local industry that produces directly competitive or similar products.<sup>124</sup> A severe damage will be measured in line with Article 4 of the WTO Treaty on safeguards. Besides, safeguards will apply to a commodity that is imported regardless of the origin inside the SADC region.<sup>125</sup>

Furthermore, a SADC State will execute safeguard policies just to a certain degree and for a predetermined time deemed significant to preclude or remedy severe damage and to expedite adjustment. In line with Article 7 of the WTO Treaty<sup>126</sup> on safeguards, the period shall not go beyond four years, unless the capable powers that be of the importing country have resolved that the safeguard policy remain in place in order to preclude or cure severe damage and that there is enough proof that the industry is indeed adjusting. However, the overall period of applying safeguard shall not go beyond eight years. Where a country in the region is of the view that any

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<sup>119</sup> Article 17 (n 99 above)

<sup>120</sup> Article 18, SADC protocol on trade (2014)

<sup>121</sup> Article 19, SADC Protocol on trade (2014)

<sup>122</sup> Article 3 (n 87 above)

<sup>123</sup> Article 3 (n 87 above)

<sup>124</sup> Article 20, SADC protocol on trade (2014)

<sup>125</sup> Article 4, SADC protocol on trade(2014)

<sup>126</sup> Article 7, UNWTO Treaty on safeguards(2010)

merchandise is being imported in such bigger amounts and such circumstances as to bring or threaten to bring severe damage to local businessmen producing similar or directly competitive commodities in its country, that Member Country shall enforce provisional safeguard measures, to the degree necessary to preclude or cure the damage. In no conditions will a measure be enforced for a period of more than 200 days.<sup>127</sup>

A member Country will alert the Executive Secretary with a printed notification of its intention to enforce such a measure and the notice shall contain the following information; the recommended safeguard measure, the product to the recommended policy, the recommended time of institution of the provisional safeguard policy, the expected duration of the provisional safeguard, if any decision on the duration of the measure has been rules and the basis. The Executive Secretary will thereafter call an emergency meeting of the CMT which is supposed to be held within 20 days from the times of receipt of the alert. Unless the CMT chooses by unanimity to deny the enforcement of such a measure, the notifying Member Country may go ahead to give the grounds for such measures.<sup>128</sup>

In the case that the CMT is unable to come up with a verdict for the appeal in less than thirty days from the day of notification, the country that is alerting the CMT will be eligible to go ahead and impose the short-term protection policies in line with the evidence shown in the mentioned report.<sup>129</sup> In some cases, the CMT will demand for extra evidence as it deliberates on the request from the country that is trying to notify them. Nonetheless, an interim safety measure cannot be enacted against a merchandise coming from a SADC State as long as its stakes of imports of the merchandise concerned in the notifying Member Country does not go beyond seven percent, given that Member Countries with less than seven percent import stake jointly account for not greater than fifteen percent of overall imports of the merchandises.<sup>130</sup> Conversely, a short-term safety policy will take the structure of tariff escalations only. Also, revenue amassed due to the

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<sup>127</sup> Article 7 (n 107 above)

<sup>128</sup> Guidelines to the SADC Protocol on trade (n79 above)

<sup>129</sup> Guidelines to the SADC Protocol on trade (n79 above)

<sup>130</sup> Guidelines to the SADC Protocol on trade (n79 above)

enforcement of a short-term safety policy will be quickly reimbursed if no consequent inquiry is continued after the enforcement of the short-term safety policy, or if succeeding inquiry fails to conclude that the augmented imports have not caused or threaten to cause severe damage to the local manufacturing sector.<sup>131</sup>

### **3.7 Protection of infant industries and Preferential Trade Arrangements (PTAs)**

Notwithstanding the provisions of Article 4 of this protocol, upon submission of a request by a country, as a short-term strategy, the CMT may stimulate an infant industry, and dependent on the requirements of the WTO, permit a country within the region to hang up some responsibilities of this protocol in reverence of similar merchandises coming in from other countries within the region.<sup>132</sup> Nonetheless, the CMT has the liberty to make verdicts, enforce terms and conditions to which permission will be subject, for the purposes of avoiding or lessening extreme disadvantage as those may lead to trade disparities.<sup>133</sup> Furthermore, the CMT will frequently assess the fortification of infant industries by a country in the region spread over in line with this Article.

Also, SADC Countries may retain PTAs and other current engagements related to trade during the period of entry into force of this protocol.<sup>134</sup> SADC Countries may also enter into fresh PTA engagements among themselves, given that such engagements are consistent with the requirements of this protocol. Nevertheless, Member Countries which are party of any present PTA and other engagements connected to trade must try to review such PTAS and other trade related engagements with the aim of attaining this protocol.<sup>135</sup>

### **3.8 Coordination of trade policies and co-operation with third countries**

Member Countries will endeavor to organize their trade policies and negotiating grounds with regard to relations with groups of countries and other organizations as outlined in Article 24 of this protocol, to expedite and fast-track the accomplishment of the goals of this protocol. Furthermore, Article 30 of the treaty states that all countries within the SADC region shall enhance bilateral relations and clinch agreements with third nations or collections of third nations and

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<sup>131</sup> Guidelines to the SADC Protocol on trade (n79 above)

<sup>132</sup> Article 26, SADC Protocol on trade (2014)

<sup>133</sup> Guidelines to the SADC Protocol on trade (n79 above)

<sup>134</sup> Guidelines to the SADC Protocol on trade (n79 above)

<sup>135</sup> Guidelines to the SADC Protocol on trade (n79 above)

global organizations as outlined in Article 24 of this protocol, to expedite as well as quicken the attainment of the goals of this protocol.<sup>136</sup>

### **3.9 Institutional arrangements and dispute settlement procedures**

The institutional strategies for the employment of this treaty will consist of the CMT, Senior officials' Committee in charge of trade related issues, the Secretariat as well as the Trade Negotiation Forum (TNF). The Committee of Ministers shall be liable for Management of this protocol and the function of any Committee or sub-committee generated under this treaty.<sup>137</sup> On the other hand, the Committee of Senior officials will be in charge of taking reports to the CMT of the Committee issues connected to the employment of the provisions found in this treaty. The Committee of Senior Officials will also diligently liaise with both the Secretariat as well as CMT, oversee the operations of the Secretariat, clear the official papers organized by the Secretariat to be delivered to the CMT, oversee the operations of the TNF and observe the enactment of this protocol.<sup>138</sup>

The TNF will be liable for the carrying out of business consultations and will submit the findings to the Committee of Senior officials. This will include; frequent assessments were bargains will be made and where the elimination of NTBs will be demanded or granted, the formation of an inquiry capability of specialists to observe the effect of measures already employed, and give counsel on the potential effect of bids under scrutiny, the formation of a bond between trade liberalization and industrial policy organization, and parts of sectorial co-operation and the formation of a zonal structure on the periodical discount and ultimate abolition of tariffs and NTBs among SADC Countries.<sup>139</sup> Furthermore, the roles of the Secretariat include; detecting research needs and areas of main concern in the trade area, working diligently with the private sector, giving procedural and organizational aid to the CMT, the TNF and the Committee of Senior Officials, giving help to sub-committees, subordinate committees and panels created to implement this protocol and organizing daily operations in the implementation of this protocol.<sup>140</sup>

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<sup>136</sup> Guidelines to the SADC Protocol on trade (n79 above)

<sup>137</sup> Guidelines to the SADC Protocol on trade (n79 above)

<sup>138</sup> Guidelines to the SADC Protocol on trade (n79 above)

<sup>139</sup> Guidelines to the SADC Protocol on trade (n79 above)

<sup>140</sup> Guidelines to the SADC Protocol on trade (n79 above)

### **3.9.1 Conclusion**

In a nutshell, regional integration creativities have been followed by nations as a tool for investment and trade and also as a way of avoiding encounters related to small markets. Regional integration leads to increased negotiating authority for the zone, luring of foreign direct investment (FDI), creation of trade advantages rising from improved economies of scale, reduction in costs when it comes to production, better competition which yields lower prices and improves the well-being of people.

Zambia is an active Member of SADC and has actively participated in the SADC FTA. The country is an important Member of SADC due to its Central location in the region and political stability. The country seeks to accomplish numerous gains related to regional integration specifically paybacks of free trade, an expanded market for its produce and unrestricted imports of inputs for production by its producers.

## CHAPTER FOUR

### THE INTERFACE BETWEEN SEZs LEGAL AND POLICY FRAMEWORK AND THE IMPLICATION FOR REGIONAL INTERGRATION WITHIN THE SADC REGION

#### 4.1 Introduction

After looking at the models of Special Economic Zones (SEZs) in Zambia and the SADC FTA in that order in the preceding two chapters in an effort to establish the logic behind their application by Zambia and SADC respectively, the author will now combine the dual in this chapter to establish the relationship between them and establish if there is any likelihood for conflict in a state where the dual are applied concurrently. Also, it is evident from the preceding two chapters that Zambia is pursuing regional integration and is a vital Member State of SADC and simultaneously, the country has enacted the ZDA Act in quest of establishing SEZs in the Country. Thus, it is sensible to scrutinize the chemistry between these two policies both of which are believed to stimulate economic development and industrialization in the nation. RTAs and SEZs, as have been broadly deliberated in the preceding two chapters, are used as investment and trade instruments by states and this chapter consequently pursues to discover the correlation between them and in case any conflict, legal or economic, happens in their concurrent application and if there is a possibility for harmonization and by what means this can be accomplished.

This chapter also discusses SEZs in Zambia and their legal implication on regional integration within the SADC region. Even though the conflicts and challenges ascending from the concurrent application of RTAs and SEZs in a nation are frequently economic encounters best scrutinized in economic footings as will be deliberated in this Chapter, such challenges rise due to existing regulatory and legal frameworks. Challenges like these are appropriately tackled through regulatory and legal policies through the employment of appropriate legal provisions both at regional and national level. This chapter will further look at how the North American Free Trade Agreement tackled the matter of RTA-SEZs Conflicts with respect to Mexico's SEZs. Furthermore, the Chapter will also discuss how the operations of China's SEZs changed after

China joined the World Trade Organizations. China is one country that has a success story when it comes to SEZs, thus this Chapter will also look at how China managed to harmonize its SEZs operation principles with those of the WTO when it joined the WTO in 2001. Most countries have either completely banned or limited goods coming from SEZs despite the SEZs being located in countries that are Member states of Regional Trade Agreements. Thus, this chapter will critically analyze this this kind of reaction as to whether it's the way to go or not.

#### **4.2 The correlation between SEZs and RTAs**

Economists contend that the presence of SEZs in Member States of RTAs affect the operations of RTAs and changes comprehensively the business environment for the set-ups of RTAs consequently creating the correlation between these instruments somewhat complex. This barney is as a result of these policies being determined by rather economic logics that are at variance with each other. SEZs are initiatives by different states meant to stimulate exports and investments while RTAs are bilateral or multilateral engagements. These SEZs put RTA partner States in competition. Besides, the key rationale of an RTA is that blockades to the passage of imports and exports within a region are abolished which is somewhat contradictory to the economic rationale behind SEZs which in most circumstances are devoted to firms preoccupied with exports.<sup>141</sup>

For instance, Farole<sup>142</sup> asserts that the employment of SEZs enticements to entice foreign direct investment (FDI) as in the instance of enticements granted in the Zambian SEZs programme can lead to a “race to the bottom” between neighboring states thus possibly threatening regional integration processes and initiatives. Seen in this light, then in an unindustrialized nation like Zambia and Member States of SADC where drawing FDI is one of the key motivations for erecting SEZs and where such enticements are regarded a growth imperative, the “race to the bottom” risk is considerably huge. If at all possible, such enticements are hard to remove but somewhat susceptible to increment as public powers face massive pressure to spread and increase them so as to continue drawing FDI. Farole<sup>143</sup> compares the investment enticements race between

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<sup>141</sup> S Woolfrey, Chapter 7, *Special Economic Zones and Regional Integration in Africa* (2013) 122 chapter in book Cape to Cairo: Exploring the Tripartite FTA Agenda <http://www.tralac.org/images/docs5548/cape-to-cairo-4complete.pdf> - accessed on October 10, 2015

<sup>142</sup> Woolfrey (n255 above)

<sup>143</sup> S Woolfrey *Special Economic Zones and Regional Integration in Africa* (2013) 15

neighboring states to a prisoner's dilemma whereby, the neighboring states would do fine if they collaborate in regulating or removing economic enticements to foreign financiers. However, they each decide on to act independently in the expectation that everyone would gain more by granting enticements whereas their neighbors do not.

As it is challenging to decide which route your rivals will take, it is expected that nations will each act in their self-centeredness in granting enticements hoping to beat their neighbors at it. Farole<sup>144</sup> yet contends that if every states in a region grant foreign investors investment enticements, they end up disproving the usefulness of the enticements and find themselves in a situation where they just convey rent to foreign investors. The SEZs programmes in Zambia and the bigger SADC region are branded by important fiscal and other enticements and consequently the prospective for such combined action problems is expected to occur. The other nations in the SADC region also running SEZs programmes include Angola, Zimbabwe, South Africa and Tanzania. Tanzania is the only East African Community Member which is also a Member of SADC. In 2002, Tanzania sanctioned an EPZ Act but the programme has failed to effectively appeal to investors mainly due to systems of government, corruption and inadequate infrastructure. On the other hand, Uganda has reached an advanced stage in establishing SEZs whereas Rwanda ting SEZs.<sup>145</sup>

Given that the regimes in the SADC region are desperate to attract investment, create jobs for their citizens and stimulate growth of their economies, they are not likely to act individually in walk out on their SEZ enticements. Also, in a region where some nations are giving profitable enticements to investors as part of their SEZ bundles, a nation in the same community would certainly find it irrational to create its SEZ plan minus resorting to related enticements as those presented by its neighbors.<sup>146</sup>

Farole <sup>147</sup> postulated that global financiers only deliberate on investment enticements after they have established themselves in their country of choice for investment. For that reason, enticements on their own do not sway investors' choice to invest in a state as numerous additional aspects also

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<sup>144</sup> Woolfrey (n256 above)

<sup>145</sup>B Hitimana 'Bridging trade deficit' *The Independent* 16 April 2012 available at <http://www.independent.co.ug/news/regional-news/5597-bridging-trade-deficit> (accessed 28 November,2015)

<sup>146</sup> Hitimana (n 266 above)

<sup>147</sup>



play a vital part in this judgment. As such, enticement-based conflicts amongst nations at the regional level are not expected to turn into advanced stages of investment in a region but are somewhat a waste of incomes that could otherwise be used to stimulate regional economic growth. Such conflicts can also worsen economic strains between regional neighbors henceforth endangering regional integration procedures that may be in place. Looking at this case from this point of view, it can be stressed that the agenda of SEZ in regions that place so much weight on domestic investment enticements has potential to destabilize economic integration within the region.<sup>148</sup>

Besides, matters concerning deferrals, levy immunities or draw backs should not be ignored when it comes to regional integration initiatives in states where SEZs are present. It must be made clear as to whether merchandises manufactured in SEZs can be traded in regional as well as local markets. Specifically, duty related incentives which are offered to investors like the ones granted by Zambia's SEZs lead to the ascendance of several matters which may prove to be problematic when it comes to regional integration.<sup>149</sup>

For example, duty-related enticements are likely to bring issues of tariff jumping. This is basically a trend where foreign firms jump over the tariff barrier of a nation in an effort to evade duty expenses. Such is likely to transpire where a foreign company uses an SEZ as an embankment to get into the regional customs terrain which is tax-free. This is more likely to happen in the Zambian setup and certainly a lot of SEZs around the world which sanction tax-free imports of factors of production from outside regions, providing more-RTA goods a green light to go in the RTA tax-free via a SEZ and then smartly escape into other RTA Member countries' customs area.<sup>150</sup>

### **4.3 SEZs in Zambia: Implications for Regional Integration in the SADC region**

Zambia being a member of SADC implies that the country has to act in accordance with rubrics and regulations concerning the Community. In coming up with its national laws, the nation has to make sure that the said laws are in acquiescence with the regional laws of SADC. As such, the

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<sup>148</sup>UNCTAD *Investment Policy Review Burundi: Main conclusions and recommendations* (2010) 4

<sup>149</sup>Woolfrey (n 261 above)

<sup>150</sup> Woolfrey (n 261 above)

Zambia Development Act of 2006 has to be analyzed for its acquiescence or conformism with the laws of SADC.

#### **4.3.1 Right of entry into the regional market**

SADC aspires to be a Customs Union. Ordinarily, this implies that the whole zone would make one single customs region and all customs duties and additional obstructive trade protocols would be removed. A customs union is basically a group of states that have created a free trade area decide upon shared outside tariffs and a shared external trade rule. The implication of this is that customarily, products going out of Zambia into the SADC region must not draw any duty.<sup>151</sup> The condition is not the same for goods coming from SEZs because SEZs are by and large viewed as being detached customs regions from those states in which they are erected. Therefore, SEZs being established in Zambia ought to be viewed as freestanding, that is, outside Zambia and the SADC region. Article 7 of the SADC protocol<sup>152</sup> states that Member Countries will not engage any fresh quantifiable restrictions and will not in line with Article 3, phase out present boundaries on the import of merchandises in Member Countries, apart from where otherwise provided for in this protocol. All the same, SADC States may engage a quota system given that the tariff charge under such a quota system is more favorable than the charge used under this decorum.<sup>153</sup>

Moreover, countries in the SADC Zone will not engage any quantitative boundaries on exports fellow SADC States, excluding where otherwise provided for in this Protocol. SADC States are at liberty to take such actions if they are viewed as essential to preclude wearing away of any bans or restraints which spread over to exports outside SADC, guaranteed that no less favorable treatment is given to countries in the region than to non-member countries or third nations.<sup>154</sup> Thus goods produced in SEZs are considered as not part of the customs zone, in other words, they are regarded as goods from non-member when it comes to levies and import duties. This situation thus affects how products from these SEZs are to be handled within the regional and national market.<sup>155</sup>

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<sup>151</sup>Woolfrey (n 61 above)

<sup>152</sup> Article 7, SADC Protocol on trade (2014)

<sup>153</sup> Article 3, SADC Protocol on trade(2014)

<sup>154</sup> Article 3(n 116 above)

<sup>155</sup> Farole (n 109above)

It must also be noted that at no point has the ZDA Act of 2006 clearly stated whether products manufactured in SEZs can be traded in the regional market of SADC. The Zambia Development Agency is endowed to oversee the framework of SEZs in Zambia and has the obligation to come up with guidelines concerning any issue that may be required in the Act. However, no guidelines have been sanctioned yet under the Act and one would be correct to assume that one of the issues which will demand necessary guidelines would be access to the regional market by goods manufactured in SEZs. The Act on the other hand states that commodities coming from SEZs of other countries into the Zambian market are considered as imports from non-SADC States hence are subject to appropriate tariffs.<sup>156</sup>

Despite the fact that there are lacunas in law under the ZDA Act, there are guidelines within the SADC protocol on trade which contains provisions for access to the regional market for goods originating from SEZs in any of the SADC States. In accordance with Article 5 of the SADC protocol on trade<sup>157</sup>, countries in the SADC zone are not permitted to impose any export levies on merchandises for export to other states within the region. Conversely, this Article will not preclude any country within the region from imposing export levies deemed necessary to preclude wearing away of any bans or boundaries, which relate to exports outside the Community.<sup>158</sup> Moreover, countries in the region will not engage any quantitative boundaries on exports to fellow SADC States, excluding where otherwise provided for in this protocol. Countries may take such actions as are essential to preclude wearing away of any bans or restraints which spread over to exports outside SADC. In this regard, goods from SEZs are treated as goods from outside the SADC customs union thus applicable duties are imposed on these goods.

It is consequently evident that one of the repercussions of regional integration via SADC for Zambian SEZs is the decline in their access to the regional market as a probable export market.<sup>159</sup> This is due to the fact that with the SADC functioning as one customs zone and restricting the quantity of merchandises manufactured in SEZs tolerable in this customs zone, this fundamentally

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<sup>156</sup> Koyama (n 107 above)

<sup>157</sup> Article 5(n above)

<sup>158</sup> Article 5( n above)

<sup>159</sup>Koyama (n 107 above)

turns what would have been regional export market for SEZ companies into domestic markets thus lowering several gains of doing business in a SEZ.<sup>160</sup>

Nonetheless, one wonders why restricting access to the regional market for goods produced in SEZs is indispensable. Numerous economic reasons support the inevitability for regulating the access to the market for merchandises manufactured in SEZs. The following are some of the motives why such regulation is essential where SEZs and RTAs co-occur as in the case of SADC:

#### **4.3.2 Competitiveness of indigenous producers**

Another concern with permitting market access in an RTA to SEZ–manufactured merchandises without duty has to do with rivalry with the indigenous manufacturers outside the SEZ. SEZs normally profit from a variety of enticements consisting of tax immunities, relaxed business regulations as well as duty free import of inputs which other manufacturers outside of these SEZs barely gain from. As discussed earlier, SEZs in Zambia have been given numerous motivations comprising and duty free inputs and tax holidays. Granted this sort of benefits that producers in SEZs have over indigenous non-SEZ manufacturers who pay all import levies on inputs and tools and pays all tariffs, permitting duty free market access to goods produced in SEZs would be a huge setback for indigenous manufacturers as producers in SEZs would benefit more.<sup>161</sup>

Such competitive drawback to indigenous manufacturers might lead to stifling of some native industries or as well taking home-grown manufacturers out of the industry.<sup>162</sup> This is more so detrimental where other RTA States are tangled several of which may not have akin SEZ agendas as the one spread out such enticements to its SEZs. For example, not all countries in the SADC region have created SEZ programmes. Also, other countries like Tanzania have tried to set up SEZs and they haven't had any significant impact. Thus, permitting duty free admittance of goods produced from Zambian SEZs into the SADC region would be a huge drawback to regional market producers.<sup>163</sup>

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<sup>160</sup> Koyama (n 107 above)

<sup>161</sup> Koyama (n 107 above)

<sup>162</sup> Koyama (n 107 above)

<sup>163</sup> Koyama (n 107 above)

Trade triangulation happens when products manufactured under preferential tariff agreement of a SEZ are permitted into the customs zone of an RTA State without levies as a good coming from that affiliate state.<sup>164</sup> Nonetheless, the challenge that might ascend is that it generates a green light for further merchandises not coming in an RTA State to be admitted into the RTA without paying appropriate levies thus encroach on tax rules of RTA members and perhaps corroding the RTA's block against non-member countries.<sup>165</sup> Therefore, if merchandises produced in SEZs from Zambia are permitted to be traded into other SADC States as products coming from Zambia, then it could open up a likelihood that any good not coming from Zambia might go into the SADC zone without charges via the SEZs.<sup>166</sup>

Besides, Trade triangulation also has the capability to destabilize chances of FDI in an RTA.<sup>167</sup> This is likely to occur where, for example, a regional body like SADC refuses to permit the of products from a SEZ without levies, therefore foreign suppliers of factors of production to firms in SEZs would have an enticement of creating their set-ups inside the RTA zone in an effort to take advantage of the bloated market access ascending from the regional group.<sup>168</sup> Also, where it is promising for SEZ products to be admitted into the zone with no appropriate charges, there would be less enticement for foreign investors to create their bases inside the RTA. Such impediment for FDI might be a challenge to states that are affiliates to an RTA as the majority of states desire to convey in higher levels of FDI.<sup>169</sup>

#### **4.3.3 Elevation of regional economic integration**

Related to the subject of rivalry between regional and local manufacturers is the subject of regional economic integration. Both are connected in that granting companies in SEZ more gain over local manufacturers may impend the efficacy of regional bodies in stimulating regional economic amalgamation which in most conditions is the most important goal of RTAs.<sup>170</sup> This might occur due to war between investors found in SEZ and resident manufacturers and is expected to hamper

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<sup>164</sup> Koyama (n 107 above)

<sup>165</sup> Koyama (n 107 above)

<sup>166</sup> T Farole *Special economic zones: Progress, emerging challenges and future directions* (2011) 136

<sup>167</sup> Koyama (n 107 above)

<sup>168</sup> Koyama (n 107 above)

<sup>169</sup> Koyama (n 107 above)

<sup>170</sup> Koyama (n 107 above)

integration of businesses through states that are affiliates of an RTA. Where for example, companies in SEZ are permitted to trade their merchandises to RTA States, this would crowd out infant indigenous suppliers. Consequently, this tendency may impede the RTA from successfully developing indigenous manufacturers and sellers.<sup>171</sup>

#### **4.3.4 Placing of SEZs competitively**

Where on the other hand States take the method of encouraging regional amalgamation over individual state-based SEZs then SEZ-based companies would miss the comparative advantages they relished before such integration elevation.<sup>172</sup> Provided that the majority of the fiscal enticements granted to SEZ businesses are attached to the performance of those SEZs when it comes to exports, RTAs fundamentally turn what had formerly been regarded as regional export markets into domestic markets thus restricting their access to these markets. The consequence is that the capability of these companies to meet their mandatory export conditions, which are the grounds of their enticements, is lowered considerably therefore lowering the benefits of being established in a SEZ.<sup>173</sup>

#### **4.4 Legal reaction to RTA-SEZ clash**

It was earlier stated that the economic challenges already stated are modelled when SEZ and RTA tools are used concurrently by states. Market access of SEZs manufactured merchandises to the home market (which includes the RTA) when SEZ initiatives revel in imports without charges, equipment as well as other regulatory and fiscal enticements remains a great concern. RTAs have invented diverse legal tactics in controlling entry of goods manufactured in SEZs into the RTA region.<sup>174</sup> One such technique is via the employment of Rubrics of Source whereby an RTA may create a distinctive statute on how products from SEZs of RTA States ought to be handled.<sup>175</sup> Regional rubrics of source set terms under which commodities are regarded to have been manufactured in that region. For example, one such situation could be that non-regional inputs undertake some degree of ‘considerable transformation’ in the region prior to meeting the requirements as originating goods in line with the terms of the RTA. In such a situation, SEZ goods

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<sup>171</sup> Farole (n 16 above)

<sup>172</sup> Koyama (n 107 above)

<sup>173</sup> Koyama (n 107 above)

<sup>174</sup> Koyama (n 107 above)

<sup>175</sup> Koyama (n 107 above)

are typically not given the position of originating goods and therefore they do not relish preferential handling within the RTA.<sup>176</sup>

In certain stern circumstances, a widespread ban of entry of merchandises manufactured in SEZ is enacted. Another technique is by drawing out a distinct passage in the treaty or Protocol creating the RTA specifying the sort of handling that goods manufactured in SEZs are to be given in the RTA. Such a clause would normally specify how products coming from SEZs may not profit from the status of originating goods.<sup>177</sup>

The subsequent section looks at how one regional organization, North American Free Trade Agreement (NAFTA) has tackled the matter with regard to merchandises manufactured in SEZs from Mexico's Export Processing Zones (EPZ) otherwise called maquiladoras as a way of comparison before assessing how SADC has addressed or ought to address the same problem.

#### **4.4.1 North American Free Trade Area**

When the North American Free Trade Agreement (NAFTA) was created in 1994, a lot of scholars held the opinion that the removal of Mexico's Maquiladoras would be unescapable.<sup>178</sup> The interpretation at that time was that with the employment of the RTA (NAFTA), the guiding framework backing the maquiladora industry would stop to exist thus leading the Export Processing Zone industry in Mexico to slowly but surely switch from an 'enclave to an integral part of Mexico's national industry structure.'<sup>179</sup> The matter at the time was that conventionally, maquiladoras were able to import their non-regional inputs into Mexico without paying duty. Through the application of rules of origin, if their processed goods had adequate regional content to meet the requirements under the NAFTA rules, no tariff would be demanded on the non-regional inputs when the processed goods crossed the border into the United States market and thus trade ricochet became a major challenge.<sup>180</sup>

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<sup>176</sup> Farole (n 16 above)

<sup>177</sup> Farole (n 16 above)

<sup>178</sup>Sargent & L Mathews *Combining Export Processing Zones and Regional Free Trade Agreements: Lessons from the Mexican Experience* (2016) 1740 <http://www.elsevier.com/locate/worlddev>

<sup>179</sup> Sargent & Mathews (n 138 above)

<sup>180</sup> Sargent & Mathews (n 138 above)

The problem of Trade deflection led to the banning merchandises manufactured in special zones because they were profiting from incentives which were not meant for them.<sup>181</sup> Companies in the maquiladora region were granted tax holidays which lasted for seven years. In line with Article 303 of NAFTA, factors of productions which were coming from outside the region were subjected to Mexico's external tariffs. This came into force in February 2001.<sup>182</sup> This news affected maquiladora operators negatively in that Mexico had higher external tariffs on goods that were coming from outside the region. Consequently, removing tariff deferral welfares may have produced an enticement for maquiladora businesses to shift to EPZ firms outside of NAFTA as a way of lowering operational costs. As a technique of averting maquiladora companies from going elsewhere, Mexico's government came up with what was referred to as 'Sectorial Promotion Programs' whereby if an Export Processing Zone company was able to show that they could not certainly substitute inputs from non-NAFTA region with those from NAFTA, then the Mexican regime would reduce external tariffs on those factors BG FCHN of production.<sup>183</sup>

#### **4.4.2 Rationale of the SEZs vs WTO Principles in China**

China is one country that is known for having successful SEZs. Its SEZs have pushed the country to become one of the World's biggest economies. However, after joining the WTO, its SEZs policies proved to be in conflict with WTO principles.<sup>184</sup> In the early 1980s, China began to steadily espouse outward-oriented growth strategies, which would provide a priceless foundation of technological invention, export earnings as well as capital funding. For more than thirty years of expansion and experiment, SEZs in China have taken a major part in advancing China's reform, economic growth and opening to the outside world.<sup>185</sup>

However, the SEZs have been under continuous alteration in an effort to adjust with the global market economy and more lately to conform to the principles of the WTO. The primary goals of China's SEZs were to experiment with market forces through new economic reform; earn foreign exchange through exports, promote economic growth and regional development, create economic

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<sup>181</sup> Sargent & Mathews (n 138 above)

<sup>182</sup> Farole (n 16 above)

<sup>183</sup> S Weitraub *NAFTA: What comes next?* (1994)

<sup>184</sup> Bhalla, A. S and Qiu, 'China's Accession to WTO: Its Impact on Chinese Employment', *UNCTAD Discussion Paper, (2002) No. 163*, ed The World Bank, November, Cambridge.

<sup>185</sup> Bhalla and Qiu(n 161 above)



connections between the local economy and Macao, Hong Kong, Taiwan and overseas Chinese societies.<sup>186</sup> Other goals were to relocate hi-tech industries into the SEZs, acquire modern technology and management expertise, create employment and establish a connection between the domestic and overseas economy.<sup>187</sup>

China created incentive packages for the SEZs in 1979. These included direct right of entry to district and central level planning units, relative freedom for native planning experts, duty free allowances, tax holidays, negotiated limited access to the domestic Chinese market for merchandises manufactured within the SEZs, residence and work authorizations for immigrants and income tax immunities for non-nationals employed in SEZs, simplification of administrative procedures and preference of land use. This enticement package was expanded during the 1980s by dropping levies and outspreading tax-free rank to fresh classes.<sup>188</sup>

Principally, one of the exceptional provisions in the field of taxation was the income tax percentage for businesses in the SEZs, which was 15 percent. Productive businesses with overseas investment that had an operation agreement of more than a decade relished immunity from income tax in the first two lucrative years and only paid half of the income tax for the next three years.<sup>189</sup> After the running out of the era for immunity and reductions, those enterprises preoccupied with enterprises, after authorization, paid income tax at a reduced charge of 10 percent.<sup>190</sup> Non-productive businesses with foreign investment higher than US \$5 million and an operation period of more than a decade relished exclusion from income tax in the first lucrative year and paid half of the tax in the subsequent two years.<sup>191</sup>

Customs duties as well as value-added tax were not taxed on export merchandises produced in the SEZs with imported tools, value added tax and export duties were not imposed on export merchandises produced with raw materials from China, excluding finished oil, crude oil and a several goods approved by the state. Additionally, foreign-funded businesses engaged in

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<sup>186</sup> Bhalla and Qiu(n 161 above)

<sup>187</sup> Bhalla and Qiu(n 161 above)

<sup>188</sup> Bhalla and Qiu(n 161 above)

<sup>189</sup> Barton, J., Goldstein J *The Evolution of Trade Regime, Politics, Law and Economics of the GATT and the WTO* (2006) 1st edn, Princeton University Press, United Kingdom.

<sup>190</sup> Barton and Goldstein (n167 above)

<sup>191</sup> Barton and Goldstein (n167 above)

manufacturing and scheduled to function for a decade or more were excused from income tax in the first and second lucrative years and were granted a 50 percent discount of income tax in the subsequent three years. They were also excused from export duties and kit used for the manufacturing of export merchandises was excused from import duties.<sup>192</sup>

Currently, the SEZs work as places to which individuals from different parts of the country come to learn about the newest advances in technology, economics, and administration as well the relations between China and the world economy. More than seven million people stay in these SEZs.<sup>193</sup> Nevertheless, the trial-by-error nature and experimental of economic reforms in China has necessitated relentless modification and alteration on the part of the SEZs. Specifically, China's accession to the WTO in November 2001 brought new challenges and opportunities to the SEZs.<sup>194</sup> According to the WTO rubrics, in addition to supervisory measures, national, regional or multilateral creativities to handle the degradation of the environment encompass the implementation of price-based measures like tariff and taxes, market-based tools, subsidies and variety of other measures. As they relate to trade, these measures are subject to WTO rules and procedures. This meant that the SEZs' plan of environment programmes had to take into consideration the possible trade impact of these measures under WTO rules as well as trade principles of the WTO.<sup>195</sup>

The aim of the WTO is to help goods and service exporters, producers and importers conduct their business, while letting governments to meet environmental and social goals. The spirit of the WTO epitomizes a liberal transaction system that targets to upsurge the welfare of trading nations by plummeting government boundaries on trade. More specifically, the WTO's rubrics the Agreements are overlong and multifaceted, because they are legal writings, touching numerous activities dealing with trade in goods and services, pertinent characteristics of intellectual property, trade policy reviews and dispute settlement.<sup>196</sup>

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<sup>192</sup> Barton and Goldstein (n167 above)

<sup>193</sup> Bhalla and Qiu(n 161 above)

<sup>194</sup> Bhalla and Qiu(n 161 above)

<sup>195</sup> Buckley, P., Clegg, J. & Wang, C.Q 'Is the Relationship Between Inwards FDI and Spill Over Linear? An Empirical Examination of the Case of China' (2009) *Journal of International Business Studies*, vol. 38, no. 3, pp. 447-459.

<sup>196</sup> Buckley, Clegg and Wang(n 172 above)

WTO Member Countries operate a non-discriminatory trading coordination that outlines their rights and their duties through these rubrics. Each country receives guarantees that its exports will be treated fairly and consistently in other countries. China's principles in their SEZs were found to be in conflict with the principles of the WTO when it joined the WTO in 2001.<sup>197</sup> These SEZs proved to be an impediment to economic integration with WTO Member Countries. The steady swing from particularistic contracting to worldwide principles occurred parallel with the swings of scarcities of the contracting arrangement and China's growth target of quick economic development and to draw more foreign direct investment. Hence, the central government gave the SEZs unique freedoms to organize their economies on a market basis to achieve these goals.<sup>198</sup> The aim of the SEZ strategy was to draw foreign investment by granting concessionary terms and a decent business environment; they carried out trial with market forces and new administration procedures, and they demonstrated to be a wonderful economic achievement.

From 2001 onwards, China started strategizing on how to harmonize its SEZs policies with those of the WTO in order to obtain maximum benefits that come with being a member of the WTO. Since the establishment of the SEZs, these zones were granted numerous freedoms, which in turn gave the SEZs total control of their own economy and were able to develop their native industry and build robust economic abilities. Nonetheless, many of those incentives were in conflict with WTO Arrangements, and since China's accession into the organization, the SEZs have been disassembling those incentives. With regard to tax regime, the most noteworthy change was the amalgamation of the enterprise income tax system under the 2008 Enterprises Income Tax Law, which positioned domestic enterprises in a similar play field, while transforming the Value Added Tax (VAT) from a production based into consumption based tax. As a result, the SEZs economic system and rules were more compatible to the framework and regulations of the WTO.<sup>199</sup>

#### **4.5 Elimination of SEZs from accessing Regional Markets**

Despite the fact that eliminating SEZs from accessing the regional market appears to be an effective method for addressing difficulties that could be awakened from the combined usage of RTAs and SEZs, it is somewhat a method that does not permit the two mechanisms to benefit from

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<sup>197</sup> Buckley, Clegg and Wang(n 172 above)

<sup>198</sup> Buckley, Clegg and Wang(n 172 above)

<sup>199</sup><sup>199</sup>Buckley, Clegg and Wang(n 172 above)

each other.<sup>200</sup> In areas where SEZ production makes up a substantial percentage of intra-regional trade, somewhat little of the probable welfare gains from the RTA are expected to be attained if the SEZ trade is disqualified from the RTA. Besides, SEZ firms would miss the opportunity to gain from the extended market in the RTA if they are created to function as exclusive units.<sup>201</sup> Thus, there is complete rationality for permitting SEZ entities access to host nation and the regional market too.<sup>202</sup>

If SEZ corporations were for example permitted to sell their goods into the regional market, they could generate outstanding grounds to stimulate regional value chains and enhance inter-regional trade as well as tighter economic links between the SADC Member States.<sup>203</sup> This would present a major prospect to lift intra-African trade which has remained tremendously low over the years. Also, permitting regional sale of SEZ-processed merchandises would give them an opportunity to take advantage of the numerous infrastructure improvements and enterprises presently being embark on in the SADC region. For, example, the Zambian government is spearheading the construction of the Great East dual carriageway, a road project that will reinforce the country's position as "a gateway and a center of trade in the SADC region."<sup>204</sup> Nevertheless, if SEZ companies are given a leeway to have right of entry to the market of the host country, it would beat rationality to give them superior enticements that other companies outside the SEZ in the regional economy do not profit from.<sup>205</sup>

Likewise, where SEZ companies and non-SEZ companies from the host country or region vie for a portion of the same market, to continue to spread out preferential treatment to SEZ companies would put the host country's own national companies at a competitive disadvantage. It is this Catch-22 that has led to the barring of investors and SEZ companies from relishing the welfares of enlarged markets ascending from regional amalgamation.<sup>206</sup>

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<sup>200</sup> Woolfrey (n 61 above)

<sup>201</sup> Woolfrey (n 61 above)

<sup>202</sup> Woolfrey (n 61 above)

<sup>203</sup> Woolfrey (n 61 above)

<sup>204</sup> Lusaka Times, Government sets aside \$1.2 billion for the construction of the Great East dual carriageway (2018)

<sup>205</sup> Woolfrey (n 61 above)

<sup>206</sup> Sargent & Mathews (n 138 above)

This scenario thus clearly shows the need to harmonize SEZ and RTA programmes in a way that guarantees that there is synergy between these two instruments and that they gain from each other. There is a chance of coming up with synergies between RTA and SEZ policy instruments in a manner that can make it possible for SEZ to influence and stimulate regional integration.<sup>207</sup> Such synergy can actually be attained via regional regulatory synchronization that goes beyond tariff issues. The next chapter will talk at length how such regulatory harmonization can be applied in the SADC region so that Zambia and the entire SADC region does not miss out on the prospective gains that can be realized via a synchronized RTA-SEZ regulatory policy framework.<sup>208</sup>

By way of emphasis, enticement grounded on tariffs connected to exports that the majority of SEZs engage are predominantly challenging given that they impede the potential for member States to take full advantage of probable cooperation between SEZs programmes and RTAs. This way, they inspire the states applying them to rule out the potential prospects for SEZ-processed merchandises to relish gains that come with regional amalgamation through RTAs and even in some thrilling cases, they wholly limit entry of SEZ processed merchandises into the regional market to regulate tariff jumping.<sup>209</sup>

#### **4.6 Conclusion**

In an effort to try and address the difficulties associated with the conflict between SEZs and RTAs programmes, SADC, like many regional bodies has chosen to omit SEZ businesses from profiting from free trade arrangements resulting from regional integration arrangement within the region. The trading of goods produced in SEZs in the SADC community has been limited due to numerous regulations and even where it is permitted, trading is subject to import duties in line with the each country's tariffs. This is so because SEZs have been generally been viewed as an impediment to regional integration within the SADC region.

The repercussions of such requirement consequently are that the two tools, RTAs and SEZs, which ought to be employed by the region towards a shared objective of elevation of investment and trade are run exclusive of each other thus not profiting from each other. The subsequent chapter seeks

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<sup>207</sup> Sargent & Mathews (n 138 above)

<sup>208</sup> Sargent & Mathews (n 138 above)

<sup>209</sup> Sargent & Mathews (n 138 above)

to find out how these two tools can be synchronized in a way that can produce synergy between them so that the region can harness their combined profits and strengths.

## CHAPTER FIVE

### CONCLUSIONS AND RECOMMENDATIONS

#### 5.1 Summary of Findings

This study has revealed that indeed RTAs and SEZs are vital policy tools adopted by numerous governments to help attain a number of economic objectives and aims such as attracting FDI, creating employment and improving GDP. Used independently and if fruitfully executed, it is clear that SEZs can generate numerous benefits for the employing government through attraction of FDI, technology transfer, employment creation, GDP growth and skills transfer among other benefits. To make this a reality and accomplish the goal of bringing in massive investment and acquiring the fruits of SEZs, many governments have put in place worthwhile enticement bundles for investors in SEZ stretching from relaxed and value-added business and regulatory environment to fiscal enticements such as duty free imports and tax holidays.<sup>210</sup>

Correspondingly, as a policy instrument on their own rights RTAs assists nations to get organized and overcome encounters that are connected to fragmented and small markets and have benefits like increased economies of scale, enlarged markets and better negotiation powers.<sup>211</sup> The government of the republic Zambia has embarked on a project of creating SEZs as one method of

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<sup>210</sup> Ahmed, K *An analysis of regional integration in Southern Africa: A South African perspective* (2011) Stellenbosch: tralac.

<sup>211</sup> FIAS *Special Economic Zones: Performance, Lessons Learned and Implications for Zones Development* (2018) The World Bank: Washington DC

boosting economic growth and bring in the much needed FDI.<sup>212</sup> Concurrently, Zambia is involved in various regional integration initiatives with the aim of improving economies of scale and having enlarged markets. This study paid particular attention to SADC, of which Zambia is an active Member State.<sup>213</sup>

Also, the study revealed that there is a very multifarious relationship RTAs and SEZs with most countries in the SADC limiting or completely banning imports coming from SEZs despite the SEZs being located in countries that are also in the SADC customs union.<sup>214</sup> While the correlation between SEZs and RTAs is repeatedly seen as conflicting and SEZs seen as posing challenges for regional integration courses for the whys and wherefores discussed in this study, the employment of both regional integration arrangements and SEZs concurrently can also present potential synergies that can ben give huge paybacks to Member states in the SADC region. SEZs provide a platform for developing countries like Zambia to draw foreign direct investment and develop the manufacturing sector which leads to employment creation.<sup>215</sup> Youth unemployment is a very serious challenge in Zambia.

According to the official statistic of the 7<sup>th</sup> National Development plan (7<sup>th</sup> NDP) in Zambia, youth unemployment levels were at a staggering 10.5%, which is higher than the national average of 7.5%.<sup>216</sup> Such kind of uninspiring statistics present the need for Zambia to continue on the path of creating more SEZs as a way of employment creation for the youth who are in dire need of jobs. SEZs help to boost production levels in the country which in turn improves the Gross Domestic Product (GDP) of a country. SEZs are probable platforms for sub-regional, regional as well as native markets in a scenario where local protocols and regional regulations can allow trade of goods manufactured in SEZs to regional markets.<sup>217</sup>

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<sup>212</sup>FIAS (n 188 above)

<sup>213</sup> FIAS (n 188 above)

<sup>214</sup> FIAS (n 188 above)

<sup>215</sup> FIAS (n 188 above)

<sup>216</sup> Youth unemployment in Zambia, Zambia Governance Foundation (2018) Submitted to the Parliamentary committee on 4<sup>th</sup> December 2018.

<sup>217</sup> Palit, A and Bhattacharjee, S *Special Economic Zones in Africa: Myths and Realities* (2017).

The challenges of low GDP, high unemployment levels among the youth and the general population and outdated technology are not only familiar to Zambia but many more other countries in the SADC region. SEZs can be a very effective tool in overcoming these challenges. Also, regional bodies like SADC through the SADC customs union to integrate for the sake of quickening economic development in the region. This shows that these tools are both beneficial thus there should be a way of harmonizing them so as to get maximum benefits from both policies.<sup>218</sup>

## **5.2 Conclusion**

The study concluded that the use of SEZs by a county that is a Member of a Regional Trade Agreement can be very complex as SEZs can act as impediment to regional integration. Nonetheless, simultaneous use of SEZs and regional integration initiatives can help to accelerate the development of a country as it presents probable prospects that can be exploited by the country to attain some of its development and economic goals. But this can only become a reality if there is synchronization in the regulatory charter for SEZs at the regional level as well as national level. Currently, Zambian SEZs are in a mutually exclusive relationship with regional integration initiatives, that is SADC customs union. It is clear that the two policies are not getting any benefit from each other as goods from Zambian SEZs have very limited access to the SADC market.

## **5.3 Recommendations**

It has been concluded that the simultaneous use of SEZs and RTAs creates a complex situation that somehow impedes regional integration. It is for this reason that many countries have banned or given limited access to the regional market for goods coming from SEZs as they would put other competitors in the market at a great disadvantage because of the huge incentives that SEZs firms receive from their host countries. Conversely, this is not supposed to be the case as there is potential for a more mutually inclusive RTA-SEZ relationship and collaboration between the two tools through synchronization of SEZ programmes in the region with RTAs.

It must be noted that compared to other regional bodies such as Economic Community of West African States (ECOWAS), East African Community (EAC) and NAFTA, very little effort has

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<sup>218</sup> Palit and Bhattacharjee(n 194 above)



been made by SADC to harmonize the relationship between SEZs and RTAs.<sup>219</sup> SADC should do its best to come up with policies that would work best for both SEZs and the SADC customs union. In this way, Zambia as well as other SADC Member States can reap maximum benefits from both SEZs and the SADC market.

According to Drofniw<sup>220</sup>, one way in which SEZs can be harmonized with RTAs is through establishing SEZs as regional manufacturing centers. While SEZs are many a times perceived as bringing problems to regional integration activities, the concurrent employment of SEZs and regional integration developments also offer prospective synergies that can be used extensively by nations trailing such approaches. One clever technique of exploiting such synergy is by using SEZs as constituents of “regional industrial instrument to expedite production in the regional and encourage regional value chains.”<sup>221</sup> SADC faces numerous challenges when it comes scaling up locally made goods and exports. Yet, the engagement of SEZs as podia for manufacturing for the SADC market can be a technique of simplifying these hitches. Nonetheless, this cannot be a reality unless the national and regional regulations permit goods produced in SEZ to be traded in the SADC markets.

Furthermore, the SADC can make SEZs as source sites for regional inputs and universal value chains. This can be best attained if the regional SEZs concentrate on their comparative advantages. SEZs may be more significant as three-dimensional apparatuses for industrial growth than as instruments of trade policy reforms.” This was a suggestion that was endorsed by the United Nations Industrial Development Organisation (UNIDO).<sup>222</sup> The basis for this argument was that SEZs give a “perfect focus for government investment and institutional reforms” and that SEZ companies particularly those focusing on making goods for exports are subject to the ‘competence scrutiny’ of being able to export. Based on this understanding, the employment of SEZs as a spatial

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<sup>219</sup> FIAS (n 188 above)

<sup>220</sup> Drofniw Mapaka *Special Economic Zones and Regional Integration*(2016)

<sup>221</sup> FIAS (n 188 above)

<sup>222</sup> UNIDO (2009) “Industrial Development Report: Breaking in and moving up – New Industrial Challenges for the Bottom Billion and the Middle Income Countries” (2009)

industry policy tool would only be feasible at the regional level if SEZs are not used as an endeavor to bring in investment to places which are economically quarantined within a region.

Also, it must be mentioned that each nation within the SADC region is endowed in different areas and ways. For instance, Zambia is endowed with Copper.<sup>223</sup> Besides, 48% of surface water in SADC is found in Zambia<sup>224</sup>. This entails that Zambia can be a center of agriculture in the region. Zambia has been a food basket for countries like Malawi and the Democratic Republic of Congo which have occasionally experienced droughts and frequent civil wars respectively.<sup>225</sup> Botswana has a robust beef industry in the SADC region. According to the Normalized Revealed Comparative Advantage (NRCA), Botswana has had a comparative in beef export in the SADC region since 1961.<sup>226</sup> Thus, if each country within the SADC region in the region can take advantage of its comparative advantage relative to other and erect SEZs founded on their strengths, for example agriculture and manufacturing, SEZs and Regional Integration initiatives would surely be harmonized. Besides, specialization would help preclude problems such as harmful competition for foreign investment and the race to the bottom in giving fiscal motivations. Another solution would be synchronization of financial enticements granted by different Member Countries investors in investors. Ultimately, the governments should act in unity to reduce or remove these financial incentives and cooperatively marketing the SADC region as an eye-catching terminus for investment as well as making industrial ties among the SEZs in the SADC region.

A major breakthrough in harmonizing SEZs and RTAs would however be the formation of an overall SEZ within the SADC region to superintend the employment and operation of all the SEZs in the SADC region. Indeed, such synchronization would help make certain that the SEZ programmes in the SADC community are in almost total harmony with the regional integration activities.

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<sup>223</sup> Lusaka times (2018) <https://www.lusakatimes.com>

<sup>224</sup> Lusaka times (2015) <https://www.lusakatimes.com>

<sup>225</sup> FIAS (n 188 above)

<sup>226</sup> Tebogo B Seleka and Prinkie G Kebakile Export Competitiveness of Botswana's Beef Industry (2016) The International Trade Journal.

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