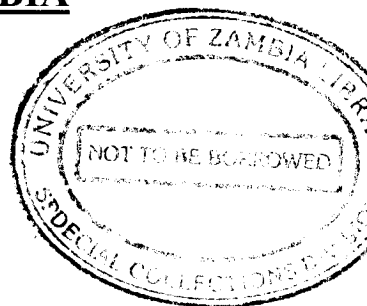


AN INQUIRY INTO THE EFFICACY OF THE LEGAL
FRAMEWORK FOR TRADE IN ZAMBIA



BY
KAMONA AKAPELWA

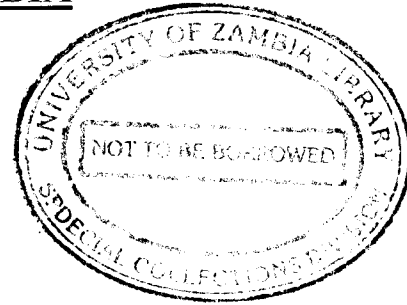
**A dissertation submitted to the school of law of the University of
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degree of bachelor of laws (LL.B)**

**The School of Law
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P.O Box 32379
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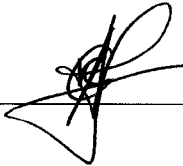
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DECLARATION

I **KAMONA AKAPELWA**, computer number 21077932, hereby declare that I am the author of this paper entitled **AN IQUIRY INTO THE EFFICACY OF THE LEGAL FRAMEWORK FOR TRADE IN ZAMBIA** and that it is a creation of my own ingenuity, due acknowledgement has been given where other scholars' works have been used or cited. I truly believe that this paper has not been previously submitted to the school for academic work.

I remain accountable for any shortcomings in the work.

Student's name: KAMONA AKAPELWA

Signature:  19/01/07

DEDICATION

To Grandpa Alfred and Mom....

Grandpa Alfred, its so sad you had to go too soon. I wish you were here to see this. Thanks for all the values you gave me. They are lessons well learnt

Mom, nothing beats you. Thanks for the sacrifice and never giving up on me and giving me the strength to go on at my ultimate lows. I know how proud this makes you. So here's to..... Your baby's got her degree and the lawyer in her is coming right at you

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First and foremost, all praises go to the almighty God for seeing me through four long years in uni and a rough oblig. May you continue to shine on me

Special thanks go to Prof. Anyangwe for the great help and supervision during my research. This hasn't been all. Thanks for good and understanding leadership

To Mr Sichilima (USAID-MATEP), Mr GM Kanja, Hilary of MCTI, dad and everyone that helped by giving me information and support. I appreciate the assistance and patience

Mom and dad, for love and sacrifice and most all of the gift of education. You have been understanding and supportive parents all through my life

Lungowe and Anayawa my sisters, issues or not, I love you guys for the different roles u play in my life. And yes Lungowe, you'll always be my best friend

Akapelwa 'Bujwi', what can I say.... You the sunlight in my life. The best little bro anyone could ask for. Nothing I say will get the point straight so just keep on keeping on, I love you

Rose, Jay, Lynda, Trish, Angie and Nsamba, school has had its ups and downs. You guys made it bearable. I couldn't ask for better company. To all our dreams and

aspirations...now its on to greater things. Hey Nja, know you thought I forgot about u but u hold a special place for being my nja 4life so i had to save u some space all to yourself

Abby, we've had the best of times. Life only gets better. You're a great friend. Good luck and stay strong

Changwe, you're that special someone. Thanks for all you've added to my life. You're the hand that's held me up, along with mom that is. You've made me a stronger person and however I turn out, good or bad, its all thanks to you

To the rest of my family, I know how much u love PWANDO so here's another excuse, like you ever needed any

To LL.B IV 2006, THE PARTY CONTINUES

To all the haters on campus, you only made me stronger. I made it so what you got to say now

To everyone...

WHO'S YO DADDY NOW!!!

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ABBREVIATIONS

ACP	African Pacific and Caribbean Countries
AGOA	African Growth and Opportunity Act
CET	Common External Tariff
COMESA	Common Market for Eastern and Southern Africa
COMESA FTA	COMESA Free Trade Area
EBA	Everything but Arms Initiative
EBZ	Export Board of Zambia
EDP	Export Development Programme
EPZ	Export Processing Zone
GATT	General Agreement on Tariffs and Trade
MFN	Most Favored Nation
MSDP	Mining Sector Development Programme
SACU	Southern Africa Customs Union
SADC	Southern Africa Development Community
UNCTAD	United Nations Conference on Trade and Development
VAT	Value Added Tax
WTO	World Trade Organization

INTRODUCTION

Trade between nations has from the earliest times been necessitated by the uneven distribution of resources and the different climatic conditions obtaining in different parts of the world. As a result no nation possesses all the resources or commodities it requires either for economic development or for consumption. It is not only the international distribution of resources that has necessitated international trade but also the international division of expertise and technology.

Trade, which is the exchange of goods or services for money or barter, has a number of benefits leading to economic growth. For example, on the export side foreign trade usually allows the employment of factors of production which would otherwise not be exported at all. Exports also bring in foreign exchange. On the import side, foreign trade allows the importation of vital goods that for one reason or another cannot be produced within the country. The contribution of such imports and exports to the Gross National Produce and to the standard of living can be very substantial.

The movement of goods across national boundaries has not always been as simple as the foregoing suggests, nor has it been determined solely by comparative advantage. The benefits of international trade as enumerated above have not always accrued to the parties concerned. The trade policies of the various parties to this trade have determined the trade flows and, thus, the benefits accruing from it. Trade policy incorporates a

government's trade policy, quantitative trade restrictions, qualitative restrictions and other direct government interventions in external economic intercourse.

An important point to note is that international cooperation, such as World Trade Organization, Common Market for Eastern and Southern Africa, Southern Africa Development Community, to reduce trade barriers and to institute some form of international obligation has to a considerable extent subjected trade policy to international regulation. However, despite this, government still has considerable latitude to institute administrative procedures and processes to regulate its commercial relations with other countries. As such, it falls in accordance with the law within the jurisdiction of the government and legislature who decide on them within their sovereign rights. Therefore, a government has the authority to impose administrative procedures to regulate its side of international trade.

This dissertation limits itself to purely legislative and administrative requirements which the government may require to be fulfilled before goods can be imported into or exported out of the country. It will look at mostly the imposition of duties and import licensing. In particular the Acts discussed include the Customs and Excise Duty Act, Investment Act, Control of Goods Act, Companies Act. It will also look at the World Trade Organization (WTO) rules and principles, Common Market for Eastern and Southern Africa Free Trade Area treaty and Southern Africa Development Community protocol. The policies behind these laws and regulations are also important in inquiring into the efficacy of Zambia's trade regulations.

The dissertation is an effort to see how the economy can be improved through trade law. The objectives are to see if Zambia's trade laws and regulations have been effective in encouraging trade and bringing about economic development. More specifically, it will look at both the international and national legal frameworks for trade in Zambia. It will then look at the law *de jure* and *de facto*. The dissertation will most importantly look at what extent the legal and administrative framework for trade has been conducive for economic development. The efficacy of the discussed law in promoting trade in such a way that it brings economic development will be analysed and recommendations based on that analysis will be given.

It is hoped that this study by its very nature will provide a useful insight into the relationship between the law and development. Zambia, like other developing countries in search of rapid economic and social development has increasingly resorted to the legislative process to induce certain desired behavior with the hope of attaining economic development.

CHAPTER ONE

LEGAL FRAMEWORK FOR TRADE IN ZAMBIA

1.1 INTERNATIONAL LEGAL FRAMEWORK FOR TRADE

In order to expand markets for Zambian products and promote trade, the Government actively seeks and supports bilateral, regional and multilateral trading arrangements. The key issues include the establishment of fair domestic and foreign trade regimes that facilitate trade to take place on a common set of agreed rules. They also include establishment of a trade regime that does not stifle domestic production and ensures that sales in foreign markets are not disrupted by certain restrictions.

Zambia is a member of the World Trade Organization (WTO) and various other Regional Economic Groupings such as the Common Market for Eastern and Southern Africa (COMESA) that give conditions that are unfavorable for her economy. The rules and agreements of the WTO are incompatible with the needs of least developed countries (LDCs) and they have impoverished the developing countries while at the same time enriching big corporations in advanced economies. In showing this, Samuel B Mulenga.¹ Wrote that concerning GATT (now known as WTO) it is arguable that while world trade expanded between 1948 and 1983, the growth was unevenly distributed. It was estimated that while the European Union, United States, Canada and Japan together will gain US\$139 billion in trade expansion and upper income countries of Asia US\$21billion, weaker economies such as sub Saharan Africa, North Africa and Mediterranean will

¹ *WTO & The Least Developed Countries: What Are The Implications?* 2000. p5

suffer losses equivalent to US\$2.6 billion. Between 1987 and 1998 Africa's share of world trade is now half of what it was a decade ago. For most countries that have undertaken rapid trade liberalization no substantial trade expansion and economic growth has been recorded but poverty levels have more doubled, for example Zambia.

1.1.1 Multilateral Trade Arrangements

The WTO came into existence on 1st January 1995. It deals with rules of trade between nations at a global level. WTO is responsible for overseeing the multilateral trading system, which has evolved over the last 50 years and provides a forum for continued trade negotiations.

WTO traces its history to 1948 when the first effort to adopt rules to govern international trade relations was made by countries after World War II. The international community saw the need for international trade and sought to do this by forming the International Trade Organization (ITO). This did materialize but the effort led to the adoption of the General Agreement on Tariffs and Trade (GATT). GATT was to govern international trade in goods until the ITO materialized. However, the Marrakesh Agreement of 1994 came up with a new organization and this is the WTO. It subsumed GATT and expanded its scope to include trade in services and intellectual property.

In February 1982 Zambia succeeded to the status of contracting party under GATT Article XXVI 5(c). It had applied the GATT on a de facto basis since its independence in

1964. Zambia is an original member of the World Trade Organization. It ratified the Marrakesh Agreements on 15 April 1994.²

WTO aims at restraining the government from imposing or continuing a number of measures which refrain or distort domestic trade. In achieving this it has placed obligations on all nations party to it and these are known as the four rules of WTO. Failure to adhere to these rules results in such disciplinary action as compliance with the rules, paying compensation or getting retaliatory action. The main rules of WTO are:

- i. Protecting the domestic industry by use of tariffs only. This rule is subject to an exception that permits countries under balance of payment difficulties to restrict imports in order to protect their external financial position.³
- ii. Tariffs should be reduced and bound against further increases.⁴
- iii. Trade should be in accordance with Most Favored Nation (MFN) Clause.⁵
This is also known as the non-discrimination clause and, basically, provides that if a member grants to another an advantage, favor or privilege or immunity on any product it must unconditionally and immediately extend the same benefit to all like products of other members. This means once a member of WTO grants any benefit to another it automatically applies to all member states. This rule has many exceptions that it is almost rendered non-existent. Exceptions to MFN tariff treatment

² *Trade And Investment*, www.WTO.org, Visited on 27th October, 2006

³ Art 2 of WTO, 1994

⁴ Art 2(1)(b) of WTO, 1994

⁵ Art 1 of WTO, 1994

include preferential access for members of regional trading arrangements in which Zambia participates. For example, all goods are freely traded between Zambia and COMESA members that have met their free-trade area (FTA) commitments.⁶ Tariff preferences are accorded by Zambia to the other COMESA members on a reciprocal basis.

- iv. National Treatment on internal taxation and regulation of imported goods once they have crossed the border and after payment of customs duty and other charges. This means that imported goods should not receive treatment that is less favorable than that extended to a like product that is produced domestically.

Zambia has to adhere to these rules and pass legislation that is consistent with them.

1.1.2 Regional Trade Arrangements

Zambia is a signatory to both the Common Market for Eastern and Southern Africa Free Trade Area (COMESA FTA) and the Southern African Development Community (SADC) Trade Protocol, whose objectives include facilitating, increasing and promoting intra-regional trade through the gradual reduction of tariffs.

COMESA was established as an organization of free independent sovereign states. It is aimed at raising the standard of living of the people of the region by cooperating in all the fields of economic and social activity enabled by a big market. The treaty establishing

⁶ Chapter II(5)(ii)(a) of COMESA treaty

COMESA was signed on 5th November, 1993 and ratified on 8th December, 1994.⁷

COMESA has replaced the regional community previously known as Preferential Trade Area for Eastern and Southern Africa. Its main focus is formation of a large economic and regional trading unit that is capable of overcoming some barriers that are faced by individual states. The most vital activities of COMESA are its trade liberalization and economic integration programme. The COMESA agenda is to deepen and broaden the integration process among member states through the complete elimination of tariffs and non-tariff barriers to regional trade and the adoption of a common external tariff (CET), the free movement of capital, labor, goods, and the right of establishment within COMESA, the adoption of a common set of standards and technical regulations, quality control procedures, certification schemes, and sanitary and phytosanitary regulations, the standardization of internal taxation (including value-added tax and excise duties), and conditions regarding industrial cooperation, particularly on company laws, intellectual property rights, and investment laws, application of harmonized competition policies, and the establishment of a Monetary Union.⁸

SADC has been in existence since 1980, when it was formed as a loose alliance of nine majority ruled states in Southern Africa known as the Southern Africa development Coordination Conference (SADCC) with the main aim of coordinating development projects in order to lessen economic dependence on then apartheid South Africa.⁹ The transformation from a coordination conference to a development community took place

⁷ S. Karingi et al, *Implications of the COMESA Free Trade Area and Proposed Customs Union: Empirical evidence from five member countries using GTAP Model and Database*, New Horizon Printing Press, Lusaka, 2002, pp17-18

⁸ www.comesa.org/obj.htm, visited on 26th October, 2006

⁹ *SADC Corporate Profile*, www.google.com, visited on 15th November, 2006

on 17th August, 1992. the SADC vision is one of a common future, a future within a regional community that will ensure economic well being, improvement of the standards of living and quality of life, freedom and social justice and peace and security for the peoples of Southern Africa.¹⁰

Membership to both COMESA and SADC has to some extent expanded economic opportunities for Zambia's domestic producers while creating a challenge to improve the competitiveness of products. This has also meant increased competition for Zambian products from increased imports.

Effective 30 April 2001, Zambia began to implement its commitments under the SADC Trade Protocol and to grant duty-free access, on a reciprocal basis, to imports of Category A products from SADC members that have also deposited their implementation instruments.¹¹ Zambia has no bilateral agreements that provide for reciprocal tariff preferences.

In addition to the stated regional agreements, Zambia is a signatory to the Cotonou Agreement signed in 2000 between the European Union (EU) and African, Caribbean and Pacific countries (ACP) as a successor to the defunct LOME Convention. This agreement is expected to promote and expedite economic, cultural and social development of the ACP countries, including Zambia, and gradually integrate them into the world economy. Zambia views this Agreement as beneficial to her because it is likely

¹⁰ *ibid*

¹¹ *Zambia Investment Center Report, 2001*

to help in the development of the private sector, increase employment and improve access to productive resources. The Cotonou Agreement has three main components, development cooperation, political cooperation and trade. The trade component of the agreement facilitates for the negotiation of Economic Partnership Agreements (EPAs) between the EU and ACP countries. Zambia with 15 other African countries is negotiating under the East and Southern African (ESA) configuration.¹²

According to the current timelines the EPAs will only take effect after 2008. Currently Zambia enjoys duty and quota free market access to the EU market under the “Everything But Arms” (EBA) Initiative. The EBA initiative was introduced by the European Commission in 2001, to give the poorest countries (LDC) preferential access to the European Union market on all goods except arms and ammunition. The EPA has become necessary because Zambia is not expected to be an LDC forever. Additionally the EBA is an initiative of EU that can easily be withdrawn.¹³

Zambia is also one of the qualifying countries under the African Growth and Opportunity Act (AGOA) passed by the United States of America. This provides preferential market access to qualifying African States. Zambia was among the first batch of 34 countries that were formally proclaimed eligible under AGOA by the US President on October 2, 2000. AGOA allows Zambian producers of certain goods duty – free and quota free access to the US market. It is therefore expected that AGOA will open markets to some

¹² D. Mudenda, *National Civil Society Dialogue on Regional Integration and Economic Partnership Agreements (EPAs): The way Forward for Zambia*, www.google.com, visited on 15 November, 2006

¹³ Ibid

Zambian exporters and there by providing Zambia an opportunity to develop its export sector, particularly non-traditional exports. Zambia recently qualified for textile benefits under AGOA in December 2001. Zambia earned these benefits by instituting a regulatory system to prevent transshipment of textiles from other countries. There is already overwhelming response from local textile companies who are willing to increase their exports by taking advantage of the AGOA provisions.¹⁴

1.1.3 Bilateral Trade Agreements

Zambia has trading partners who are not members of either COMESA or SADC. A number of bilateral agreements have been negotiated with Egypt, China, Belgium and Ukraine. There are proposed bilateral agreements with Belarus. Bilateral agreements with the Democratic Republic of Congo, Mozambique, Tanzania, Namibia, Botswana, Zimbabwe, Rwanda, Sudan and the Slovak Republic are under negotiation. A trade agreement with Malawi was negotiated and is at the moment awaiting ratification and signing.¹⁵

1.2 National Legal Framework for Trade

Zambia's constitution as amended in 1996 is conspicuously silent on the place of international law in Zambia's municipal law. Since Zambia is a common law jurisdiction it seems to be the case that its practice follows that of most common law countries, which is that customary international law forms part of the municipal law and that an Act of

¹⁴ www.WTO.org, visited on 27th October 2006

¹⁵ Ibid

Parliament is necessary in order to transform a treaty into domestic law. In the absence of such integration, the treaty, though binding on Zambia at the international level, has no domestic applicability.¹⁶

The Customs and Excise Act as revised in 1999,¹⁷ remains the main legislation governing Zambia's foreign trade. The Act deals with, *inter alia*, the importation and exportation of goods, rules of origin, customs valuation, tariff concessions, the Revenue Appeals Tribunal, excise tax, and anti-dumping and countervailing duties. The Control of Goods Act and Competition and Fair Trading Act, 1994 are also important to Trade. The 1993 Investment Act¹⁸, as amended up to 1998, sets out conditions for investment in Zambia (section (6)). The Act does not apply to banking, insurance, and mining and quarrying, which are ruled by the Banking and Financial Services Act, the Insurance Act, and the Mines and Minerals Act, respectively. The Investment Act and the Mines and Minerals Act apply equally to local and foreign investments. The Companies Act, 1994¹⁹ regulates the formation of companies and patents. According to it all businesses engaging in domestic or international trade must be registered with the Patents and Companies Registration Office. Trading activities are open to Zambians and foreigners.

Tariffs continue to be Zambia's main trade policy measure, and virtually all are *ad valorem* (98.6% of total tariff lines). Goods imported into Zambia are generally subject to three types of duties: the customs tariff, the excise duty, and the value-added tax. The

¹⁶ C Anyangwe, *Introduction to Human Rights and International Humanitarian Law*, Unza Press, Lusaka, 2004, p195

¹⁷ Chapter 322 of the Laws of Zambia

¹⁸ Chapter 385 of the Laws of Zambia

¹⁹ Chapter 388 of the Laws of Zambia

latter two apply equally to imported and domestically produced goods. Quantitative restrictions have been eliminated and import controls are maintained only for environmental, sanitary, phytosanitary, moral, health, and security reasons. An import permit, though, is required for most agricultural products. Export controls and regulations are also minimal. Exports are assisted by a variety of incentives ranging from tax exemptions and concessions to duty drawback.

An Export Processing Zones (EPZ) Act²⁰ was enacted in November 2001. The Act provides for the establishment of an EPZ Authority in September 2002, and its functions, constitution of the EPZ Authority Board, the establishment of EPZs and their licensing and regulation, and the granting of incentives to investors and business enterprises in EPZs. Apart from the EPZ Authority, the Act envisions investors – referred to as developers – to develop EPZs in which other investors will apply for licenses to set up enterprises qualifying for EPZ status.

The Act also provides for granting EPZ status to new investment, to incremental investment or to existing enterprises exporting 80% or more of their production, and for special incentives by exempting those companies (given EPZ status) from the following taxes for a period of ten years (with the possibility of renewal): corporate tax, withholding tax on dividends and tax on interest or royalties, capital gains tax, import VAT, customs duties on imported raw materials, plant and machinery, intermediate and capital goods, and excise duty. Local labor laws apply to EPZ companies.

²⁰ No. 7 of 2001

Exports are also zero-rated for VAT refund purposes, although imported machinery and accessories still attract VAT.²¹

Goods stored in bonded warehouses or manufactured under bond are normally exempt from customs duties and taxes when they are exported.

In addition to these laws are regulations that call for manufacturers to have manufacturing bonds and excise bonds. The foreign investors may also be afforded tax holidays.

In 2000, Government amended the Banking and financial Services framework to strengthen the ability of the Central Bank to respond promptly and comprehensively to any adverse developments in the financial sector. Most non-banking institutions are now governed by the Banking and financial Services Act of 2000. The emergence of capital markets in Zambia has had a positive impact on the economic and financial sectors.

Insurance in Zambia is regulated under the Insurance Act of 1997 as amended by the Insurance (Amendment) Act, 2005. The law states that all assets in Zambia must be insured in Zambia with a company registered under the Act. This is a company licensed by the Registrar of Pensions and Insurance. Where the type of insurance is not available locally authority should be obtained from the registrar for such cover to be placed outside Zambia. However, the law does not make it compulsory to insure any asset or liability.

²¹ *Export Board of Zambia Report, 2001*

In an effort at creating a competitive and productive economy which would improve standards for Zambians, Zambia has continued to pursue various economic reform measures aimed at achieving positive economic growth, reducing dependence on copper and creating a solid base for poverty reduction. This has included moving towards a more open and deregulated economic and trade regime. Zambia has also continued supporting bilateral, regional and multilateral trading arrangements and has signed reciprocal, promotional and investment protection protocols with a number of countries.

To enhance the activities and competitiveness of the private sector, the Government has implemented a number of measures. These include streamlining the Duty Draw Back and the Manufacturing under Bond systems, which provide relief to export producers through rebates of duties paid on imported raw materials. In addition the Import Declaration Fee and the Pre-shipment Inspection requirements on imports were eliminated in 1998. In 1998, the Government restructured the tariff system, by reclassifying some products and lowering duty on capital goods and raw materials to either 0 or 5% while maintaining a rate of 25% on imports of finished goods.²²

The primary objectives of Zambia's trade policy are as follows:

- To maintain an open economy with a liberalized import and export regime that will enhance industrial development;
- To encourage the production of exportable products and continue the process of diversifying the export base;
- To support and encourage exports of value added goods;

²² *WTO Report by Government on Trade Policy Review*, www.WTO.org, visited on 27th October, 2006

- To seek new markets and strengthen Zambia's trading ties with regional and other international markets;
- To ensure efficient customs administration and fair trade practices; and reduce poverty through sustainable economic growth.²³

²³ *ibid*

CHAPTER TWO

A COMPARISON OF THE TRADE LAWS AND THE ADMINISTRATION OF TRADE IN ZAMBIA

2.1 ADMINISTRATION OF TRADE IN ZAMBIA

The preceding chapter discusses the provisions of Zambia's trade laws. All trade should be conducted in accordance with these. This chapter discusses the administration of trade in Zambia. It is aimed at showing whether trade is conducted according to the books or it is done differently on the ground.

The most prominent of trade regulations is the imposition of taxes and duty on all goods to be manufactured as well as those to be imported. Excise duties at the rates specified in the excise tariff set out in the Second Schedule of the Customs and Excise duty Act, referred to as the excise tariff, are charged, levied, collected, and paid in respect of goods manufactured or produced within Zambia. Customs duty is paid for goods imported into Zambia upon their entry. However, retailers can post clear while manufactures cannot. This is where a trader importing finished goods may be allowed to let them cross the border before clearing. It operates in such a way that the goods are checked at the border and then they are let to proceed into the market whilst the officials do the evaluating and clearing. This gives the foreign trader an advantage over the local trader who is not given a chance to post-clear the raw material needed for him to manufacture. The foreign trader, for example Shoprite, is at an advantage because he comes in as retailer. The advantage is that he's goods are placed on the shelves as soon as they arrive and do not

have to wait for the clearing process. Manufacturer has to wait to clear raw material, then produce and then sell. The retailer can pass goods at border and sell and clear while goods are on the shelves. This time taken before clearing has an impact. The retailer's profit is not delayed. He starts to realize it even before he clears the goods. On the other hand, the local manufacturer has to wait to get his goods cleared before they can be put on the shelves. He does not realize his profits or reinvest in his business at the same rate as the foreign trader. This gives the foreign trader an upper hand in the competition.²⁴

To start manufacturing one needs a manufacturing bond. This is where they leave collateral or deposit money with a bank and get a bond or they pay a premium or leave collateral with an insurance company. Once the manufacturer has imported his raw material and produced his goods they go into the bonded warehouse. Records are kept for goods leaving and once they are sold the manufacturer is bound to pay taxes. Failure to pay such taxes will result in the bank or insurer paying Zambia Revenue Authority (ZRA) from the money deposited, premium or collateral. The manufacturing bond is one way of the government securing payment of taxes. Most local manufacturers cannot afford this security before they manufacture but may be able to pay after their finished goods are sold. For this reason they cannot start to manufacture. The manufacturer will also need an excise bond. This operates in the same way as the manufacturing bond but it is a security for the payment of excise duty.²⁵ The foreign trader or importer brings in finished goods that may not have been subjected to this cost in the country of manufacture. This will make the goods more competitive as the cost of production is lessened.

²⁴ Interview with W Sichilma, Researcher at USAID-MATEP , interview on 19th October, 2006

²⁵ Ibid

The use of bonded warehouses is subject to written application to, and authorization by, the Zambia Revenue Authority (ZRA). Goods leaving the bonded facility have to be declared to the ZRA or the relevant Customs Office. All bonded warehouses are licensed and operated according to prescribed regulations and must pay an annual fee of K 808,000. The operator of a bonded warehouse must also post a bond. Goods entered for warehousing are not subject to duty until removed and re-entered for home consumption, but they are subject to any applicable anti-dumping duty at the time of warehousing. Goods may be stored in a bonded warehouse for up to two years, following which they need to be cleared and entered for export or consumption. If they have not been removed at expiration of the period, the goods are disposed off via auction or tender, and the proceeds applied to the charges against the goods. If an importer or owner of goods is unable to pay the duty on them, the goods are deemed to be forfeited and disposed off via auction or tender following deduction of all costs, expenses, charges, and unpaid fines from proceeds of the sale, the residual amount is returned to the importer or owner.²⁶

ZRA is the body that assesses and determines duty due on goods that are to be marketed. An importer unsatisfied or aggrieved by a customs-related determination can appeal the decision to the Revenue Appeals Tribunal, established under the Revenue Appeals Tribunal Act of 1998. Until 2001, appeals were accepted only on issues related to customs valuation or customs classification. A refusal to license is now also possible to

²⁶ Interview with L Phiri, Trade Officer, Foreign Trade Office, Ministry of Trade and Industry, 3rd November, 2006

appeal. Appeals to the Tribunal's ruling can be made to the High Court and the final appeal is to the Supreme Court.²⁷

The 1993 Investment Act, as amended in 1996 and 1998, provides for general incentives, such as tax concessions for enterprises established in rural areas, income tax reductions, and income tax exemptions on dividends from farming. Capital expenditure allowances, deductible in calculating profits, are permitted for buildings, plant and machinery and farm improvements. The income tax is reduced by one-seventh for rural enterprises during their first five charge years of business. Additionally, a 100% allowance, in respect of expenditure, is available for certain improvements to farming land, including surveys and water conservation and deductions are available for investment in technical education and research. The Act also allows for tax paid in respect of foreign income to be treated as a credit for countries with double taxation agreements with Zambia.

The government of Zambia enters into tax concessions giving certain traders tax holidays. An example of this is the case of Shoprite. They had an agreement with the government that granted them a tax holiday. Normally, it is the Zambia Investment Center that should award incentives to the investors or such trader. What has been the trend normally is that these investors or traders that have been granted these tax holidays will operate in Zambia upto the time that their holiday expires. They, then, leave the market and this does not benefit the Zambian economy. In addition to loss of income from the taxes unpaid the local trader is denied a chance to grow as his goods are

²⁷ *WTO Government Trade Policy Review-1996*, www.WTO.org, visited on 27th October, 2006

subjected to taxes and so may be less profitable than competing foreign traders who are not subjected to taxes.

Under the Mines and Minerals Act 1995, any investment, including prospecting, by a holder of a mining right can be deducted from income tax, and imports of productive mining equipment required for exploration or mining can be exempt from customs, excise and VAT. Further, the 1996 Finance Act reduced the rate of corporate tax from 35% to 30% for companies listed on the Lusaka Stock Exchange, and abolished the super tax on profits made by large-scale mining enterprises. In the 2002 Budget, the following tax concessions were extended to all mining companies: reduction in the rate of taxation on income to 25%, removal of withholding tax levied on dividends, royalties, and management fees as well as on interest payable by mining companies to shareholders and affiliates, and reduction of the rate of mineral royalty to 0.6% of gross minerals produced. Importation of most items of agricultural machinery, some categories of industrial machinery, e.g. industrial furnaces and ovens, printing machinery, and other machinery used in food preparation, and certain "merit" goods, for example books, fertilizers, primary forms of rubber, and steel, are exempt from customs duty. The value added tax system, in the meantime, permits VAT registration at the outset of investment, input taxes to be recovered on capital purchases through monthly VAT returns (even prior to commencement of trading), and repayment of excess input taxes over output taxes, rather than the former being held as a credit against future liabilities.²⁸

²⁸ Ibid

The Export Board of Zambia (EBZ) is a statutory government agency established in 1985 to promote, develop and encourage exports of non-traditional goods from Zambia. The EBZ is largely financed by the government, its members pay a nominal annual membership fee and contribute to costs of promotional activities, including trade fairs. The Board executes projects financed by foreign donors relating to its activities. Additionally, it provides informational and technical assistance to registered exporters, aimed at diversifying products and markets, especially for non-traditional exports, quality improvements, effective export marketing, promoting investment in export-oriented enterprises, and fostering human resource development in export production and marketing.²⁹

The EBZ manages and coordinates the operations of a Global Trade Point Network of the Global Trade Point Programme, an UNCTAD programme. This programme both uploads Electronic Trade Opportunities in Zambia for other countries, and downloads such opportunities elsewhere for Zambian businesses. Zambia is one of the eight trade points in Africa that have become operational and have received UNCTAD's recognition. The infrastructure for this programme needs to be strengthened.³⁰

Three projects have benefited from external assistance: Export Development Programme I, Export Development Programme II, and the Mining Sector Diversification Programme.³¹ The Export Development Programme (EDP), funded by the European Union, has provided preshipment finance to producers' associations in five sectors. The

²⁹ *Export Board of Zambia Report, 2001*

³⁰ *Ibid*

³¹ Chapter IV(3)

sectors are fresh cut flowers, fruits, and vegetables; coffee; tobacco; high-value crops (paprika, herbs, spices, and essential oils); and cotton and textiles. Credit is of three types: short-term credit against export documentation or letters of credit (60-180 days); short-term credit for production inputs (up to 12 months); and short-term credit for marginal capital expenditure. These credits have enabled the associations to undertake bulk purchases of inputs and make huge savings in input prices and procurement costs. The EDP I ended in September 1999, and EDP II was scheduled to begin in September 2002. It has been expanded to include leather, wood, and organic products.³²

A multi-purpose credit facility at the Bank of Zambia provides medium and long-term credit financing through registered participating financial institutions (PFIs), which in turn lend to private enterprises engaged in export related activities.³³

In Zambia the issue of food safety is remotely addressed: it is mostly non-existent in the minds of many producers. Our farmers who are not used to meeting any food safety standards cannot even sell to local supermarket chains because these supermarket chains have standards they must meet.³⁴ In this regard, phytosanitary requirements do not have a bearing on trade within the local markets. It is also important to note that Zambia does not have the necessary technology to conform to the phytosanitary requirements.

³² Ibid

³³ *Zambia Trade Policy Review, 1996*

³⁴ S. Frederick, *Zambia's Business Competitiveness*, A-Z of Business in Zambia, 2006 ISSN: 1819 2688, p17

South Africa does not have a Free Trade Area. However, Zambia has an agreement with South Africa to allow the free trade of certain products only. South Africa, being of a stronger economy, chooses those products advantageous to her while Zambia opens her markets to almost all products.³⁵

The Government has from 1996 continued to streamline export procedures through the simplification and harmonisation of relevant documents, reform direct and indirect taxation both in structure and in procedure, and to control fiscal deficit. In 1998, the administration of the duty draw back scheme was reformed to make it an efficient instrument. The Import Declaration Fee was abolished to ensure consistency with Zambia's commitments to the WTO and Pre-shipment inspection requirements were also abolished in 1998.

The government does not impose any taxes on the exporter. However, to prevent manufacturers from posing as exporters to avoid taxes when they are local traders the government has introduced the duty drawback scheme. This operates in such a way that the exporter is made to pay the initial taxes and duties required of a manufacturer and for the importation of raw materials. Once goods are produced they are put in the bonded warehouse and pay duties just like goods for the local products. Once these goods have been exported it is upto the exporter to claim a refund from government for the taxes paid he is exempt. When any claim is made for exemption from or drawback of any duty, fee, or charge in accordance with the provisions of the Act, the burden of proof shall lie upon the claimant or exporter to show that he is entitled to such exemption or drawback.

³⁵ Interview, Sichilima, p18

Usually when there is a shortage of certain products there is a ban on the export of those products. Usually this is seen in food bans, for example for maize and its by products. This means that all maize products cannot be exported even when there is a surplus of produce made from the by-products of maize. Exportation of these goods may be beneficial and may not worsen the food shortage in any way.

It should be noted that there are no tight exchange controls as foreign exchange can be bought from banks and bureaux de changes without explaining what it is to be used to pay for. The fact that insuring is not compulsory and there a liberalized foreign exchange regime means assets in Zambia can still be insured with foreign insurers. This has been demonstrated in the case of some major foreign investors who only have motor insurance or staff related insurance placed locally.³⁶

Despite all this effort at increasing trade, Zambia has to date continued to be dependent on copper, which generates about 80 percent of her total export earnings. There are several reasons for this situation such as drought, HIV/Aids epidemics, external factors and inadequate investment and diversification efforts.

³⁶ Interview with S. Akapelwa, President of Insurance Brokers Association of Zambia, 19th November, 2006

2.2 COMPARISON OF THE LAW *DE FACTO* AND *DE JURE*

Generally, trade in Zambia can be said to be administered according to the law. However, certain provisions of the law are not followed. Examples include the phytosanitary requirements. This is because Zambia lacks the technology to enforce them. In addition, certain laws, for example on insurance, are hard to follow because sealing the loopholes may infringe international obligations of a free market.

Since 1996, the tariff structure of Zambia has remained broadly unchanged. The Customs and Excise Duty Act is followed in the imposition of taxes and duties and this is ensured by schemes such as the manufacturing bond, excise bond and duty drawback. Investment has been encouraged and the Investment Act is followed. There are still four tariff bands, although the rates on certain products have been changed within the 1996 range (zero, 5%, 15%, and 25%). The changes have occurred as part of a tariff rationalization process. The coefficient of variation of 0.7 (as against 0.68 in 1996) indicates continued modest dispersion of tariff rates from one category of products to another. The modal (most common) rate of 15% applies to some 33% of tariff lines. Close to two thirds of all lines bear a tariff rate of either 15% or 25%, while some 21% of tariff lines (1,265 lines) are duty-free. Productive machinery for agriculture as well as certain items such as books and pharmaceuticals are imported duty free. Virtually all raw materials and most industrial or productive machinery fall within the 0 to 5% tariff categories, and 72% of mining and quarrying-related tariff lines attract the 5% tariff rate. The 15% tariff band is generally

applicable to imports of intermediate goods, the 25% rate is reserved for final, "non-essential" goods, including many consumer goods, and agriculture-related tariff lines.³⁷

The Government has from 1996 continued to streamline export procedures through the simplification and harmonisation of relevant documents, reform direct and indirect taxation both in structure and in procedure, and to control fiscal deficit. In 1998, the administration of the duty draw back scheme was reformed to make it an efficient instrument. The Import Declaration Fee was abolished to ensure consistency with Zambia's commitments to the WTO and Pre-shipment inspection requirements were also abolished in 1998.

³⁷ *Zambia Trade Policy Review, 1996*

CHAPTER THREE

ANALYSIS OF THE LEGAL FRAMEWORK FOR AND ADMINISTRATION OF TRADE IN ZAMBIA

The preceding chapters discuss the legal framework and trade laws as well as the administration of trade in Zambia. This chapter analyses these regulations and the administration to see the impact of such trade regulations on the economy. This will show the efficacy of the trade laws. This chapter will also make recommendations based on the analysis.

At the outset it is important to note that the term development is not synonymous with economic growth. It is possible to envisage a situation of economic growth without development and vice versa.³⁸

The international legal framework has had its impact on the Zambian economy. It has led to the advancement of a liberalized economy, which entails free markets for goods and services, and the Zambian market is open for both local and foreign traders. This, however, has had its advantages and disadvantages but the disadvantages have outweighed the advantages. For example, various foreign investors have merely stripped the economy, taken their profits and left it almost for the dead. In a nutshell, private investment has failed to bring about national development through improving the

³⁸ M Todaro, *Economics for a Developing World*, Longman, London, 1977, p65

economy as it was intended to.³⁹ The foreign investors also take advantage of the local markets as investment and trade are in a way interlinked. It is clear from this that there is something wrong in the manner in which the free market system has been effected or that there are certain other conditions at play, both locally and foreign that impede it. For example, the Investment Act leaves loopholes for investors or traders to take from the economy and then leave the country. The investment sector is too open to foreign investment. It is indisputable that foreign investment generates money for government through taxes. However, the local infant industry is not protected from the stiff competition imposed by investors and multinational corporations. Although infant industry safeguards do exist they can be said to be toothless bulldogs.⁴⁰ Further, Zambians do not have the capacity to invest in huge ventures like those of foreign investors and the result of this has been that the local industry has been overshadowed by foreign investment, leading to the shutting down of various local companies and eventual unemployment of the people.⁴¹ In addition to this, the provision which allows for foreign investors to repatriate large portions of profit out of Zambia may be regarded as not in the interest of the growth of the Zambian economy. The act does not require the reinvestment of a certain percentage of the profits realised by foreign investors. It has been seen by authors such as Nkandu Priscilla Chikonde⁴² and Mwenya Kaela⁴³ that investment in Zambia has been done wrongly. However, their studies have mainly looked at investment laws and have not given suggestions in the light of Zambia's international trade

³⁹ K Kaulung'ombe, *A Crititcal Study Of The Regulatory Regime Of Investment In Zambia*, Obligatory Essay, 2004, p1

⁴⁰ Interview with W Sichilima, USAID-MATEP

⁴¹ Kaulung'ombwe, p15

⁴² *The Adequacy Of Investment Laws (Particularly The Investment Act, 1993) In Promoting Investment In Zambia*, 2001

⁴³ *An Overview Of The Legal Framework For Investment In Zambia*. 2001

obligations. Most studies have been on investment and have not analysed trade and how it has been in Zambia although it can be seen that the investment laws do affect how trade has been conducted.

Another matter is that Zambia, as a member of the WTO and the various other Regional Economic Groupings such as the COMESA is given conditions that are unfavorable for her economy. The rules and agreements of the WTO are incompatible with the needs of least developed countries and they have impoverished the developing countries while at the same time enriching big corporations in advanced economies or countries. Due to the WTO rules and agreement the Zambian market is open and allows foreign traders and investors to ravage the economy. Traders like Shoprite are allowed to bring in already processed agricultural products such as potatoes when they can get these from domestic farmers and this does not help the economy in any way. It only brings about unfavorable competition for these imports may have a cheaper production cost. Zambian farmers therefore, find it hard to sell at competitive prices. This is evidenced where farmers in the region are complaining that food retail chains setting up shop in their countries have a step-brotherly attitude to towards local produce. Guy Robinson, president of the Zambia National Farmers Union, says farmers are deeply concerned and very much disappointed with some of these South African food outlets that are refusing to sell Zambian agricultural products. The widest criticism of the Southern African retailers is that they have established relatively low linkages to local businesses. South African food retail outlets used allegations of poor quality and lack of capacity to provide the required quantity to justify turning down local producers. This is according to the Farmer's Union

of Malawi (FUM) who alleged that this was false, as they did not even try their produce before rejecting it.⁴⁴

Osafo-Kwaako⁴⁵ says one of the effects of liberalization in a developing country are that it may leave the market open for foreigners to ravage while the developing country has little trade opportunities created as it cannot export as much. It receives a lot more imports than it exports.

This is supported by other economists such as Samuel B Mulenga.⁴⁶ He writes that concerning GATT it is arguable that while world trade expanded between 1948 and 1983, the growth was unevenly distributed. It was estimated that while the European Union, United States, Canada and Japan together will gain US\$139 billion in trade expansion and upper income countries of Asia US\$21billion, weaker economies such as sub Saharan Africa, North Africa and Mediterranean will suffer losses equivalent to US\$2.6 billion. Between 1987 and 1998 Africa's share of world trade is now half of what it was a decade ago. For most countries that have undertaken rapid trade liberalization no substantial trade expansion and economic growth has been recorded but poverty levels have more doubled, for example Zambia.

Raj Soopramanien⁴⁷ also points that developing countries have been adversely affected by the WTO/GATT rules. Although developed countries have made reductions in their

⁴⁴ 'Buy Our Produce' Local Farmers Urge Supermarket Chains, the *Zambian Marketer*, Issue 7: fourth quarter 2006, p14

⁴⁵ Notes on the effects of free trade. Unpublished, 2005

⁴⁶ *WTO & The Least Developed Countries: What Are The Implications?* 2000. p5

⁴⁷ *GATT, WTO & The World Bank: A Tale Of Controversy, Protectionism &*

tariffs these have occurred in areas which are not of significant economic interest to Africans. Conversely, in areas which are of interest to developing countries, such as agriculture and textiles, tariffs remain high and even prohibitive in certain cases, and quota restrictions or tariff quotas continue to apply. Developing countries reduce tariffs on goods that are of interest to the developed countries and so it is only the developed countries that benefit from the free trade promoted by WTO.

According to *The Economist*⁴⁸ poor countries need to sell their labour-intensive and farm products to rich ones. But they are blocked by high tariffs. Farmers in poor countries struggle to compete with heavily subsidized farmers in Europe and America-and even see their own market destroyed when food surpluses are dumped. Lost trade costs poor countries.

Though in an effort to stimulate trade the WTO rules have had an impact on a country's ability to protect its local traders. An example of this would be Articles 3 and 11 on national treatment and prohibition of quantitative restrictions have had their effect.⁴⁹ This limits governments action to protect local traders as they cannot impose quantitative restrictions on what the foreign trader can import or impose higher taxes or duties on the foreign goods to make local goods more competitive.

One of the key challenges COMESA countries have faced during the process of integration, especially the transition to FTA, has been reduced revenue to finance

⁴⁸ *A Survey Of Globalization*, 2001, p31

⁴⁹ Opcit

development programmes by government. This has led governments to look to alternative sources of revenue including the introduction of value added tax and broadening the tax base. Competition has also stiffened among COMESA countries and some sectors have clearly needed protection, as they cannot withstand the competition.⁵⁰ This can be seen in the case of the farmers illustrated above.

Zambia's membership of overlapping regional and bilateral arrangements makes its trade regime more complex, as they have different geographical coverage, trade liberalization agenda, phase-in periods, trade policy instruments (such as non-tariff measures, including rules of origin, technical barriers to trade, sanitary and phytosanitary measures, internal taxation systems), and goals.⁵¹ Its trading partners receive different access conditions to its market depending upon which agreement they are in, and the stage of implementation of the agreement by the partners; members of more than one agreement can trade with Zambia under either agreement. The same applies to Zambia's exports to these markets. This may distort trade and preferential/incentive patterns in an unpredictable manner and could entail inconsistent obligations being undertaken by Zambia.

Even though both the EBA and AGOA offer preferential market access to Zambia, there are still challenges to be faced. Challenges such as, the conditions that must be satisfied to obtain the zero-duty treatment – in particular the rules of origin, and Pest Risk

⁵⁰ *The Zambian Marketer*, p24

⁵¹ In total, there are nine common members of SADC and COMESA. These are Angola, the Democratic Republic of the Congo, Malawi, Mauritius, Namibia, Seychelles, Swaziland, Zambia, and Zimbabwe. Other regional groupings that have cross-membership with SADC/COMESA are the Southern African Customs Union (SACU), Indian Ocean Commission (IOC), East African Cooperation Commission (EAC), and the Inter-governmental Authority on Development (IGAD).

Assessment for agricultural products. Without special treatment as provided by the arrangements cited above, least developed countries like Zambia are at a disadvantage in the multilateral trading system by virtue of their level of development. Apart from implementation problems, the inability to participate effectively worsened by high tariffs and trade distorting sanitary and phytosanitary measures, subsidies and other requirements in the international markets, makes it difficult for small economies like Zambia to be integrated in the World economy.

The legislative procedures of the Export Processing Zones Bill were accelerated due to awareness that diversification strategy failed to achieve, in the long-run, Zambia's goal of annual growth of non-traditional exports of 20%. The goal was met during the 1991-96 period, but not subsequently.⁵² The full implementation of the related Act passed in 2001 is expected to contribute to boost non-traditional exports. The Investment Act has been amended accordingly.⁵³ Moreover, the incentives available to operators in certain sectors (mainly agriculture and manufacturing) have been enhanced. Non-traditional exports that have growth potential include the primary agricultural commodities, cotton, coffee, soyabeans, sorghum, and tobacco, fresh flowers and vegetables, cotton-based textiles and garments, processed food including sugar and stockfeeds, gemstones, value-added wood products, leather products, and high value crops which include marigold, paprika, herbs, spices, and essential oils.⁵⁴ Trade and investment policies still emphasize horizontal diversification of non-traditional exports (any export other than metals, including those aforementioned), in order to reduce Zambia's dependence on metals, in particular copper,

⁵² *Export Board of Zambia Report, 2001*

⁵³ Section 6

⁵⁴ *Government Trade Policy Review, 2006*

and counter falls in their production and fluctuations of their prices. In addition to measures in place at the time of the 1996 Trade Policy Report, such as the VAT with the zero-rating scheme and duty and tax concessions, to integrate agriculture and mining into the manufacturing sector for the further processing of export commodities Zambia is gradually rationalizing its tariff schedule. The Export Development Programme (EDP) and the Mining Sector Diversification Programme (MSDP) also aim to promote non-traditional exports. Despite all this effort, Zambia has to date continued to be dependent on copper, which generates about 80 percent of her total export earnings. There are several reasons for this situation such as drought, HIV/AIDS epidemics, external factors and inadequate investment and diversification efforts.

Programmes such as EDP I and EDP II have their benefits although more is required to enhance Zambia's trade, especially on the export side. The EBZ with the aid of the EU development programme (EDP II) undertook a trade mission to Lubumbashi in the Democratic Republic of Congo. It was stated in this mission that the two governments should consider putting in place a bilateral agreement that would enhance trade between the two countries.⁵⁵ This shows the EDP II is not sufficient.

Although it is said that Zambia is involved in more trade since liberalization,⁵⁶ this does not necessarily make it good news for her economy. This is because most of the traders on the market are foreign and all the profits obtained from such trade are taken out of

⁵⁵ J Chiwala, DRC Exhibition Cements Exports and Neighbourly Relations: Trade Mission Builds Bilateral Ties in *the Zambian Marketer*, issue 7: fourth quarter 2006, p9

⁵⁶ Reports made by the government and other stake holder report an increase in Zambia trade activity. These reports include the Trade Policy Report to the WTO

Zambia to their countries since they prefer to reinvest in their countries. In connection with this, although it is said that all insurance should be done in Zambia, this has not been the case and Zambia has lost revenue in this way. A Zambia State Insurance corporation (ZSIC) Tour pack insurance package failed to register any profits. It was stated that this is because tourists did their insurance from abroad. What was obtaining on the ground is that Zambia does not really benefit much from the tourism industry as tourists arrive at their destinations having already paid for everything in their countries of origin. At the end of the day Zambians end up with only figures of tourists that have visited while they make no real earnings.⁵⁷ This is the same thing that happens with trade.

Zambia does not get maximum benefit from trade because she does not have the capacity or technology to produce finished goods. The returns from the raw material and semi-finished goods she exports cannot compare to the finished goods imported. Take as an example, the price of copper Zambia sells as a raw material is negligible compared to the price she buys finished copper goods at. This also has a negative impact on the economy as more foreign exchange is spent than earned. This could result in balance of payment difficulties. In addition, foreigners rarely insure their goods or bank their profits in Zambia. The only benefit Zambia has is through the taxes.

The manufacturing bonds and excise bonds place a disadvantage on the local manufacturer. They raise the cost of production. This makes local goods less competitive. They also discourage local participation on trade as sometimes the local manufacturer

⁵⁷ W Zulu, ZSIC Tour Pack Fails on Market, In *The Guardian Weekly Newspaper*, Vol 89, October 21-27 2006, p3

will not have sufficient funds to cover both the bond and the production cost. They may only have sufficient funds to cover one of the other. They may also be able to pay the duties to be secured by the bond after production and sell of their goods. Thus, they may have been denied an opportunity to source an income and to contribute to the economy.

The Investment Act of 1993 was intended at attracting investors. It can be said that it has been successful in doing this. Despite the large number of investor influx into the country⁵⁸ the experience in Zambia has been that a substantial number of investors have not been quality investors and only come into the country to set up small business in order to take advantage of the weak and inadequate laws and to maximize their profits, to externalize funds and enjoy the tax exemptions while taking away from the economy by not reinvesting in it. Also, there is a low capital base which has led to a lack of substantial local investors. The lack of economic development resulting from investment in Zambia is evidenced by the high poverty levels and the lack of participation in investment by the locals. Investment in Zambia has also failed to provide any meaningful permanent employment to the locals.

Zambia's bilateral agreements put phytosanitary requirements. Zambia does not have the technology to make goods that conform to these standards and so she can export some goods to the other countries such as South Africa. If a Zambian producer wanted to satisfy these requirements they would have to send their goods to laboratories abroad, for example South Africa, for testing or to bring them to conformity before they can market

⁵⁸ *Zambia Investment Center Report*, July 2004

them. This increases the cost of production and most local traders cannot afford this. The price of goods for those who can goes up and this makes their goods less competitive.

It is noteworthy that the trade regulations have not only had adverse effects. Zambia has seen some benefits from the increase in trade. The government has an increase in revenue. However, some traders are not of any financial benefits to Zambia as they take advantage of tax holidays that they negotiate with the government. However, they can be said to have improved the quality of life of Zambians by bringing in good quality goods and offering a variety. They have also encouraged competition among the local traders and this has resulted in improved local products. It can be seen where there was only Hungry Lion at first but now they have a competitor, Zamchick, a local company.

The fact that exports are free as there is no tax is a good law. It helps local exporters compete favorably on the outside markets. Membership at the WTO also has its benefits, such as Special and Differential Treatment of the less developed and developing countries, without which these economies could not survive

CHAPTER FOUR

4.1 SUMMARY

This dissertation has examined the efficacy of legal framework for trade in Zambia. This has been done by looking at what the regulations sought to achieve and if this has been achieved. The regulations were meant to increase trade in Zambia and eventually economic development.

Chapter one discusses the legal framework for trade. It has looked at the international agreements, bilateral agreements and the national laws and regulations. We see in chapter one that Zambia is a member of the WTO, COMESA, SADC among other agreements. These place obligations on her to open her markets. The national laws are tailored to conform to these international obligations. We also see that the main laws that affect trade are the tax and investment laws.

Chapter two looks at the administration of trade by government and its officials. This chapter essentially looks into whether there's a disparity between the law *de jure* and that *de facto*. It is shown that although trade is administered according to the book there are a few disparities. Thus, it is important to look at the trade laws as they have an impact on trade related development. It is not merely a matter of implementation.

In chapter three an analysis of the law and administration shown in the first two chapters is made. This chapter discusses whether the legal framework for trade has been

efficacious. It is seen in this chapter that the law has been efficacious in increasing trade. However, growth does not mean development, thus, it is seen that although there is trade growth there is no economic development. Infact the bigger economies have taken advantage of the Zambian economy and disadvantaged it.

4.2 CONCLUSION

This dissertation is an effort to see how the economy can be improved through the law. The objectives are to see if Zambia's trade laws and regulations have been effective in encouraging trade and bringing about economic development. More specifically the dissertation is aimed at looking at the international trade regulations, how they have affected Zambia and if they can be applied effectively. It has highlighted the defects of the legal framework for trade and made recommendations to remedy these defects. The dissertation will show how the Zambian economy can be improved through laws and regulations. It is an effort to move liberalization from the negative to the positive. If done correctly, by protecting domestic traders or producers in a free market, liberalization will bring about development in a nation especially a developing nation like Zambia. The importance of trade in any country cannot be disputed. It is cardinal to economic development. In order to enhance trade and to broaden their markets countries indulge in international trade. However, this also stiffens the competition for trade in goods and services. For economic development through trade there is need for laws and regulations that promote trade but at same time protect the national markets from unfair competition in trade from stronger economies.

Zambia has a liberalized economy. This means she is involved in international trade. This has had advantages and disadvantages. One of the disadvantages may be seen where the local traders and manufacturers do not have the financial resources or technology to enable them compete favorably with the foreign traders. This has led to the closure many local businesses. In Zambia most industries have closed in such a fashion. This cannot be seen as growth of the economy.⁵⁹

In general, trade liberalization has failed to contribute to substantial economic growth, and GDP per capita continues to decline. On the one hand, the reforms have stabilized the macroeconomic situation and boosted competition and efficiency. On the other hand, reforms have entailed significant adjustment costs and have failed to help the development process. The import-competing industrial sectors suffered heavy losses after liberalization, and their contribution to GDP fell by 50 per cent.⁶⁰ Formal employment as a share of the total labour force fell from 23 per cent in 1981–1990 to 8.3 per cent in 2003. Thus, recent trade liberalization and the associated adjustment measures have resulted in a fall in employment levels in Zambia by over 50 per cent. Moreover, most of the development indicators have worsened. Due to the HIV/AIDS pandemic, life expectancy has declined; and due to the deterioration of the economy and rising levels of poverty, education indicators have also worsened. The authors' analysis is that the implementation of the reforms was too rapid, unsequenced and often without, the support

⁵⁹ O. Saasa, "*Opportunities for Foreign Direct Investment in Zambia*", A-Z of Business in Zambia, ISSN: 1819 2688, p13

⁶⁰ *Coping with Trade Reforms: A Developing-Country Perspective on the WTO Industrial Tariff Negotiations*, www.WTO.org, visited on 29th December, 2006

of the stakeholders, and that there were serious limitations in administrative capacity.

Zambia is a member and active participant in all major multilateral organizations. It values regional and bilateral cooperation, particularly with its neighbors, but is aware of the limitations of such cooperation.⁶¹

Since its last Trade Policy Review in 1996, Zambia has revised or amended some of its trade-related laws. The Customs and Excise Act as revised in 1999, remains the main legislation governing Zambia's foreign trade. The Act deals with, *inter alia*, the importation and exportation of goods, rules of origin, customs valuation, tariff concessions, the Revenue Appeals Tribunal, excise tax, and anti-dumping and countervailing duties. The 1993 Investment Act, as amended up to 1998, sets out conditions for investment in Zambia. The Act does not apply to banking, insurance, and mining and quarrying, which are ruled by the Banking and Financial Services Act, the Insurance Act, and the Mines and Minerals Act, respectively. The Investment Act and the Mines and Minerals Act apply equally to local and foreign investments.

It has been shown in the work above that the legal framework for trade has not been completely efficacious. It has managed to increase trade activity in Zambia. However, it has failed in the cardinal role of promoting development. This is because it has failed to

⁶¹ See WTO (1996) for details.

bring any meaningful trade or investment. The increase in trade is merely statistics for Zambia as it benefits foreign traders who have flooded the market.

4.3 RECOMMENDATIONS

4.3.1 INTRODUCTION OF EFFECTIVE SAFEGUARDS TO THE INDUSTRIES

- Safeguards and trade regulations are required to stem the serious adverse effects on some sectors. It is very difficult to introduce these without breaching international obligations. However, Zambia can introduce protective trade barriers that do not violate any international regulations that it has to adhere to. Firstly, there must be an improvement in the forevotality by better management of current exports such as copper. Government should continue in its effort to diversify its exports to include the non-traditional products. In addition to this, the infant industry safeguards that have been described as toothless bulldogs should be reviewed. Government should check why they have failed and then remedy this.

- In as much as the government is fighting hard to promote agricultural development there should be measures put in place to ensure that only foodstuff that cannot be produced locally, like apples are imported. These are some of the trade imbalances that need to be checked as a matter of policy to ensure that local producers have a broader market to target for

their products. All profits that a trader like Shoprite makes are taken outside the country and not reinvested in Zambia but if the Zambian farmer sold he would reinvest in the Zambian economy. It is time government started promoting interests of local producers instead of just giving incentives to investors at the expense of local business.⁶² However, this difficult with Zambia's obligations under the WTO, COMESA and SADC the best thing would so best is to remove incentives like tax exemptions or tax holidays which will make these products more expensive and they will be encouraged to buy Zambian products which will be cheaper especially with put together with recommendations of lowering cost of production.

4.3.2 CHANGES IN THE INVESTMENT REGIME

- The government should strengthen the legal system to protect local investors but at the same time lucrative enough to attract investors anyway. Particular sectors should be closed up to foreign investors and only open to local investors. If this is not possible then it should only allow for joint ventures where the enterprise is owned or run by both local and foreign traders. The local traders should have a large share of the enterprise.
- The law on externalization should require that at least a particular percentage of profits made by foreigners should be reinvested in the economy.

⁶² Interview with M Ililonga, President of the Consumers Association of Zambia on 15th December, 2006

- A minimum amount of investment is required. This recommendation has however been implemented in the recent past. The Zambia Development Act⁶³ gives a minimum on the amount of investments and this is especially for those who seek to qualify for incentives. An investor investing not less than five hundred thousand United States Dollars or the equivalent in convertible currency, in a priority sector or product, is entitled to incentives as specified by or under the Income Tax Act or Customs and Excise Act. The Minister responsible for finance may, for the purposes of promoting major investment in an identified sector or product, by statutory instrument, and in consultation with the Minister, specify additional incentives for investment in an identified sector or product of not less than ten million United States Dollars or the equivalent in convertible currency, in new assets that qualify for those incentives.

- The government can also get reverse benefits from foreign investment by encouraging build on transfer (BOT) and build on operate and transfer (BOOT) projects where investors build infrastructure such as shops and operate them for a number of years until they realize their profits and capital and then they can give the infrastructure to the government. In this way government does not lose out when it gives incentives like the tax holiday.

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- When the government enters into tax concessions, such as the tax holiday, with traders they should make it mandatory that that trader does not stop operating when such holiday expires until the lapse of a period at least equal to that for which the holiday was granted. They should even enact laws that regulate the entry, monitor the performance and exit of foreign investors and traders.

4.3.3 LIMITATIONS ON FOODBANS, DUTY DRAWBACK AND POST CLEARANCE

- When there are food shortages the government can effect food bans on exports as it has in the past. The only difference is these bans should not affect a whole industry. An example to explain this can be in the maize industry. The food ban should not be on maize and all its products. The ban can be on the export of maize and maize meal but should allow for exports made from by products such as animal feed or opaque beer as these can still help the economy. The will not worsen the maize shortage in any way because they are products of by-products which would otherwise be thrown.
- The duty drawback scheme should be scrapped off as the delays in refunds adversely affect the exporters. There should be other checks, instead of the duty drawback, to make sure that the produce will be for export and the manufacturer is not merely being fraudulent. If the

government wishes to maintain the duty drawback scheme they should do it for the first time manufacturers. Once they have become established these manufacturers should be exempted. This will improve the manufacturer's finances and he will be able to produce more or at a faster rate. Connected to this is the post clearance, which has an adverse effect on the rate of production. It is said that the faster the time taken to produce the more profits.⁶⁴ Thus, the local manufacturer must be allowed to post clear his raw materials.

4.3.4 EXCHANGE CONTROLS

- Financial services are a major intermediate service that networks all economic activities. Firms need an orderly and effective supply of financial services in order to organize their production efficiently and effectively and in order to be competitive in both the domestic and international trade. The Bank of Zambia, which is the country's Central Bank, regulates the financial system of the country. It is advisable that there should be some kind of exchange controls. This should regulate the movement of foreign exchange in to and out of the country. It should also be checked what the foreign exchange (forex) will be used for. The banks should be the only institutions dealing with forex and not the numerous bureaux de change that exist in Zambia. However, this should merely be a check on the forex leaving and entering the country. The controls should not limit the amount that a person can have or for what purposes it is

⁶⁴ USAID, *Assessment of Zambia's Capacity to Implement the Proposed Measures to Improve and Clarify GATT Articles V, VIII and X on trade Facilitation*, Final Draft, May 2006

meant. Doing this will lead to a breach of international obligations. Controls will also lead to checks that the laws regulating other sectors like that of insurance are followed.

4.3.5 QUALITY STANDARDS AND LABELLING REQUIREMENTS

- There can also be the imposition of quality standards for all imports. However, it may be difficult to monitor this as Zambia does not have the resources to taste the quality of imports. However, government may put such regulations and then acquire this equipment. This will have its benefits in the long run. Imposing quality standards will improve the quality of imports. It will also raise the importers' cost of production thus making their goods less competitive than the local goods.

- Labeling requirements should also be stiffened. In The Sunday Mail of September 3rd 2006 an article showed that there were Chinese products that were labeled in Chinese. This was stated to have been in contravention of the regulation requiring that all goods on the market should be labeled in English or a local language. A survey of the local market showed a various goods labeled in Chinese. These included umbrellas, electrical appliances and drinks.

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