

**THE IMPACT OF GLOBALISATION AND FREE TRADE ON  
DEVELOPING COUNTRIES, PARTICULARLY ZAMBIA**

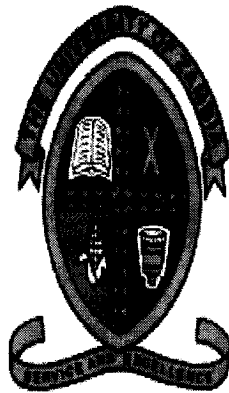


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**THE IMPACT OF GLOBALISATION AND FREE TRADE ON DEVELOPING COUNTRIES, PARTICULARLY ZAMBIA**

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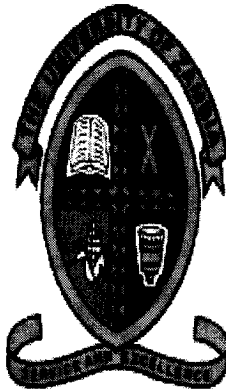
**THE IMPACT OF GLOBALISATION AND FREE TRADE ON  
DEVELOPING COUNTRIES, PARTICULARLY ZAMBIA**

**BEING A DIRECTED RESEARCH SUBMITTED IN PARTIAL FULFILMENT FOR  
THE AWARD OF A BACHELOR OF LAWS DEGREE (LLB)**

**BY**

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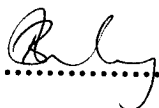
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## **DEDICATION**

To the memory of **Mr Peter Kayafa Tembo**, you taught me that humility and the desire to learn make a man....

## **ACKNOWLEDGEMENTS**

My sincere heartfelt acknowledgement goes to Mrs A. C. Chanda, my supervisor, for all the academic excellence and noble guidance without which this directed research would not have been possible to achieve. I owe respect and express my indebtedness to Miss M. Lwatula the course coordinator for the timely directions she offered with regards the progress of this research. The aforementioned great women and their contributions to this paper are so invaluable that I am made to declare that any pitfalls herein are my own. I would also like to thank Mr. F. Mudenda and Mr P. S. Ng'ambi for their time and knowledge that helped shape this paper. Above all, I acknowledge the Almighty God and His unfailing love, grace, peace and guidance for strategically placing me amongst my family who constantly and without faltering bless me with their love. Captain Robbin Mubanga, Mrs. Nancy Mubanga, Mwenya, Tisa, Lombe and Bupe I love you all. To the Kings Bench, Rex Zambwe, Wallace Chitungu, Musopelo Chilongoshi, Bruce Mwauluka, Joshua Sikazwe and myself, we may not have conquered the school of law, but the time spent aiding each other I would not trade for the world. To all the graduating class of 2009 I am grateful to them all for the help, the rebuke and the occasional leading astray that constantly reminds me of my humanity.

## ABSTRACT

Developing countries have continually sought ways and means through which they can abate their declining economic fortunes and the developed world has seen globalisation as the saviour of the developing world. The free movement of goods and services in and out of nations is the only perceived mode through which the ever worsening economic strife will finally be abated. There has been a failure to realise that just as nations have different cultures and thus policy objectives, no single and uniform concept applied across the board can have a single positive impact across third world countries. Developing countries have nonetheless adopted liberal market policies and viewed openness as their only hope of economic freedom. The policies adopted are to a very large extent imposed and controlled by the Bretton Woods Institutions that provide different forms of assistance, direct and indirect, in exchange for the compliance by developing countries of particular structural reform that suits them. Zambia has in no way been left out with regard to reform and embracing liberal market policies of openness and freer trade with state parties of the World Trade Organisation. After the oil shocks of the 1970s and the sharp decline in Copper prices the nation has had very little success in economic recovery that is supposed to lead to sustainable economic growth and better living standards for the majority of the people of Zambia. In considering where the nation has gone wrong with its quest to attain economic development via the medium of globalization and free trade, it is necessary to consider the nations that have successfully pursued this course and attained economic freedom. A number of issues, hinging on policy as well as legal and institutional framework need to be addressed in order that the nation may cease to operate on an autopilot basis led by developed nations that continue to reap the rewards of integration at the expense of the developing countries, Zambia inclusive.

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# **CHAPTER ONE**

## **THE IMPACT OF GLOBALISATION AND FREE TRADE**

### **1.0 Introduction**

It has been the call by global leaders to unite the world in all aspects of human endeavour and to ensure that the unity is of benefit to all. Globalisation and free trade, though they seem novel concepts, have as many positive aspects as they do negatives. International relations are carried out on the basis that they should be of benefit to all. Is this benefit plausible with the current global trends in trade and international movements of finance, aid and the continued excessive poverty levels in developing countries?

The developed world has seen globalisation as the saviour of the developing world, the movement of goods and services in and out of nations as though no boundaries existed as the means through which the ever worsening economic strife will finally be abated. There has been a failure to realise that just as nations have different cultures and thus policy objectives, no single and uniform concept applied across the board can have a single positive impact across third world countries.

Developing countries each possess a unique set of needs that they seek satisfaction for through the medium of trade, particularly international trade. The aim of development through trade with other nations offers a possible avenue through which the ever declining fortunes of the developing world could be reversed but a number of worries still linger in the air with regard to this prescription. Why is it that the notion of trade receives greater life and enthusiasm from the industrialised world rather than the developing world? How is it that

globalisation will have a positive impact on these developing countries when their needs continue to be overlooked by world leaders who meet to chart the way forward?

The recent failure in 2008 of the ninth round of the GATT/WTO negotiations (termed the DOHA round) serves to underscore the lack of progress in the developing countries. The DOHA round has highlighted the failure of the multilateral trading system to carry into effect the objectives of both the GATT and the WTO with regard to the needs of developing countries. In view of the reluctance of the industrialised nations to take into account the main products, either primary or otherwise, that form developing countries main contribution to the multilateral trading system, what then is the impact of their continued participation in issues relating to globalisation and free trade? Of what relevance is this continued participation considering the fact that they continue to be overlooked with regard to issues considered pivotal for their inclusion in the mainstream?

## **1.1 Statement of the Problem**

The international trade regulation system has been in place for a number of years now. It is regulated through the World Trade Organisation (WTO), International Monetary Fund (IMF) and the World Bank. From the GATT days, the industrialised nations have championed the call for globalisation and free trade as the ignition for economic development worldwide but especially for developing countries who have been lagging behind. Despite the introduction of these concepts in the 1900s, developing countries have remained largely underdeveloped and the situation continues to worsen. Zambia is no exception in this regard. What then has been the impact of globalisation and of free trade on developing countries, more importantly

on Zambia? Is the international trade system in place meeting the demands towards economic development in developing countries?

## **1.2 Objectives of the Research**

The main objective of this paper is to provide an evaluation of the impact of globalisation and of free trade on developing countries with a specific focus on Zambia.

Specific objectives will be to consider the triangular relationship between WTO, IMF and the World Bank and their collective impact on the Zambian economy? Is it plausible for developing countries to develop economically by wholly opening up their markets or should protection be afforded to particular sectors of the economy so as to limit the impact of international economic crises?

## **1.3 Rationale of the Research**

Prescription of policy objectives for developing countries by the industrialised nations is perceived as the mode in which developing countries will move from where they are to a state of being developed. After many years of having their markets open to foreign products and investment, there has been no change in economic fortunes. The lack of access to markets in industrialised countries by the developing countries has an ironical ring. Products from industrialised nations are allowed into developing nations whereas no reciprocal obligation is placed on or exercised by industrialised nations.

The proponents of globalisation and free trade are mainly from developed countries and no reciprocal enthusiasm has been expressed by the developing nations. The technological transfer and the trade in finished products is arguably only of benefit to the developed countries. They alone possess the capacity to produce, develop and export finished products. Developing countries main contribution to the world markets is the export of raw materials which have their prices determined by the industrialised nations who buy the materials. It is then necessary to look into and consider the effects of the integration of the world economies and the effects of trade without borders especially, and more importantly, on the countries that have been provided with a plan that as yet shows little or no benefit for those it is intended to help.

#### **1.4 Specific Research Questions**

1. What are the effects of free trade and globalisation on the Zambian economy and society?
2. What form of protection has Zambia developed, legal or otherwise, to keep such effects in check?
3. Who determines whether or not the impact of free trade and integration of the global economy are beneficial for developing countries?
4. Is the international trade system in place meeting the demands towards economic development in developing countries?
5. Is it plausible for developing countries to develop economically by wholly opening up their markets or should protection be afforded to particular sectors of the economy so as to limit the impact of international economic crises?

## **1.5 Research Methods**

The study is mainly based on secondary information, namely text books, statutes, conventions, articles, paper presentations as well as internet generated presentations and research papers generated by news media. In addition to all the literature that will be considered, personal interviews shall be conducted with persons conversant with international trade law including persons from the Zambia Development Agency (ZDA) as well as development specialists from the School of Law at the University of Zambia who have competence in International Trade Law and Investment.

## **1.6 The Position of developing Countries**

*“Even before the birth of the multilateral trading system in the form of GATT/WTO, developing countries were concerned with three important issues: what should be their relationship with the more developed countries in the context of the global trading system? How can their trade policies be used to promote their economic growth and development? And how do the global economy and developments therein impinge on their prospects for growth and development?”*<sup>1</sup> These concerns have become even more important with increasing global integration particularly because the world considers economic integration as the key to economic growth and development especially for low income developing countries.

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<sup>1</sup> WTO Secretariat, From GATT to the WTO: The Multilateral Trading System in the New Millennium, The Hague: Kluwer Law International, 2000 p113

Globalisation may well have the potential of making third world countries, *inter alia*, grow economically, technologically, educationally, politically and otherwise stronger. However, it is no secret that there are several risks engrained in it.<sup>2</sup> A lot still has to be done, especially in the sphere of the International Monetary Fund (IMF) and the World Bank, particularly their lending policies to help rather than hamper economic prosperity particularly to third world nations.

While building export capability must remain a major policy objective for developing countries, of equal importance is the methodical sweeping aside of trade barriers. There is scope here for developing countries to take the initiative in helping launch a new round of trade negotiations which could draw them into the mainstream of globalisation. The danger is, in the absence of such initiative, the benefits of globalisation will continue to be monopolized by a few countries while the shocks and setbacks, if they are severe, will affect the entire world economy.

## **1.7 Globalisation and Free Trade**

Globalisation as a term and concept has acquired a considerable amount of fluidity over the years and is adapted to suit the needs of the author for every work in which it is discussed or analysed. By formal definition, it is the process by which the people of the world are unified into a single society and function together and this process is a combination of economic, technological, sociocultural and political forces. Economic globalization is the most common

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<sup>2</sup> [http://www.africafront.com/news/136/globalisation\\_and\\_the\\_developing\\_world.html](http://www.africafront.com/news/136/globalisation_and_the_developing_world.html) visited on 31<sup>st</sup> May, 2008

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reference, which is integration of national economies into the international economy through trade, foreign direct investment, capital flows, migration, and the spread of technology.<sup>3</sup>

Globalisation has come to be seen as a process or phenomenon similar to the industrial revolution that rocked the seventeenth and eighteenth centuries. It has affected the entire globe but been of considerable benefit to only a few nations in this case the developed nations. This is largely due to the protectionist tendencies adopted by developed countries towards exports of interest to developing countries usually termed technical barriers to trade. Goldin and Reinert<sup>4</sup> have seen globalisation as a five faceted concept which, if managed in the right way, can bring development in all countries. These five facets are trade, aid, finance, migration and ideas. They are all very useful in the analysis of globalisation but only trade is the focus of this paper.

The general effects of globalisation on developed countries have been expressed by a number of anti-globalisation campaigners as expressing themselves mainly in the impact of outsourcing of labour. Outsourcing has caused a number of companies involved in non-skilled, labour-intensive production to relocate their plants in areas with cheaper labour costs in comparison with developed nations. In order that the full impact of globalisation can be appreciated it is important to focus on a particular aspect of the global economy in which its effects are clearly expressed and in this case free trade is being considered.

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<sup>3</sup> <http://en.wikipedia.org/wiki/globalisation> visited on 31<sup>st</sup> May, 2008

<sup>4</sup> Ian Goldin and Kenneth Reinert. Globalization for Development (Washington: World Bank and Palgrave Macmillan. 2007) p9

Free trade is a situation where the trade of goods and services between and within nations flows unhindered by government imposed restrictions. Though the phenomenon of free trade has not been achieved in total in any territory across the globe, it is however necessary to consider its importance and impact because the policies of developing countries have over the years shown a shift towards attainment of free trade. Trade, and in particular free trade, thrives best in an environment where the theory of comparative advantage is allowed to operate unhampered.

The idea of comparative advantage is simple and intuitive. If our country can produce some set of goods at lower cost than a foreign country, and if the foreign country can produce some other set of goods at a lower cost than we can produce them, then clearly it would be best for us to trade our relatively cheaper goods for their relatively cheaper goods. In this way both countries may gain from trade.<sup>5</sup> *“In running our personal affairs, virtually all of us exploit the advantages of free trade and comparative advantage without thinking twice. For example, many of us have our shirts laundered at professional cleaners rather than wash and iron them ourselves. Anyone who advised us to “protect” ourselves from the “unfair competition” of low-paid laundry workers by doing our own wash would be thought loony.”*<sup>6</sup>

The difficulty, however, is that developed nations undertake what is referred to as dumping. It is defined as *‘the act of a manufacturer in one country exporting a product to another country at a price which is either below the price it charges in its home market or is below*

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<sup>5</sup> <http://internationalecon.com/Trade/Tch40/T40-0.php> visited on 31<sup>st</sup> May, 2008

<sup>6</sup> Alan Blinder, "Free Trade," The Concise Encyclopedia of Economics available at <http://www.econlib.org/library/Enc/freetrade.html> visited on 31<sup>st</sup> May, 2008

*the cost of production.*<sup>7</sup> Under the WTO agreement, dumping is condemned (but not prohibited) if it causes or threatens to cause material injury to a domestic industry in the importing country. Despite this, *“there is essentially only one argument for freer trade, namely: that it promotes a mutually profitable division of labour and makes possible higher standards of living all over the globe...put differently, free trade increases economic welfare, both for the world as a whole, and for each nation.”*<sup>8</sup> Free trade is about allowing buyers and sellers to negotiate, and come up with prices, without the interference of strict government regulation.

The importance of free trade has been underlined by the heavy regulation of the multilateral trading system. The creation of the Bretton Woods Institutions as well as the GATT/WTO underscores this point. The General Agreement on Tariffs and Trade (GATT) was seen as an important step in facilitating world trade in that though countries were interested in trading with each other, the granting of concessions was not something that could be done easily on a bilateral level. The General Agreements' main objective was the reduction of barriers to international trade thus making it freer. This was achieved through the reduction of tariff barriers, quantitative restrictions and subsidies on trade through a series of negotiations. The GATT was a treaty, not an organization. The functions of the GATT were taken over by the World Trade Organization (WTO) which was established during the final round of negotiations in the early 1990s.

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<sup>7</sup> [Http://en.wikipedia.org/wiki/Dumping\\_\(pricing\\_policy\)](http://en.wikipedia.org/wiki/Dumping_(pricing_policy)) visited on 31<sup>st</sup> May, 2008

<sup>8</sup> John H. Jackson et al. Legal Problems of International Economic Relations, 3<sup>rd</sup> edition (Minnesota: West Publishing Co. 1995) p14

The WTO was born out of the eighth and most important round of the GATT negotiations. It is an international organisation designed to supervise and liberalise international trade.<sup>9</sup> The World Trade Organization is the only global international organization dealing with the rules of trade between nations.<sup>10</sup> It is responsible for negotiating and implementing new trade agreements, and is in charge of policing member countries' adherence to all the WTO agreements. The goal is to help producers of goods and services, exporters, and importers conduct their business in a more conducive environment.<sup>11</sup>

It has such programs as the Trade Policy Review Mechanism (TPRM) whose main objective is to monitor trade policies in every member state and to ensure adherence to the agreement; it also has what is referred to as the Generalized System of Preferences (GSP) which is a derogation from Article 1 of the agreement allowing developed countries to enter into individual country packages with developing countries of their choice. This derogation was in line with the 'special and differential treatment' granted to developing countries under Part IV of the agreement. Another important aspect of the WTO is the establishment of the Dispute Settlement Body (DSB) under the Dispute Settlement Understanding. The body is responsible for settling disputes between member states and operates with the priority of quick and efficient dispute settlement so that no party is prejudiced. The recommended maximum length of any dispute before the body is nine months, appeals inclusive. It is worth noting that an extra three month period is allowed for longer and more complex cases.

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<sup>9</sup> [http://en.wikipedia.org/wiki/world\\_trade\\_organisation](http://en.wikipedia.org/wiki/world_trade_organisation) visited on 19<sup>th</sup> July, 2008

<sup>10</sup> [http://www.wto.org/english/thewto\\_e/whatis\\_e/whatis\\_e.htm](http://www.wto.org/english/thewto_e/whatis_e/whatis_e.htm) visited on 6<sup>th</sup> August, 2008

<sup>11</sup> [http://www.wto.org/english/thewto\\_e/whatis\\_e/whatis\\_e.htm](http://www.wto.org/english/thewto_e/whatis_e/whatis_e.htm) visited on 6<sup>th</sup> August, 2008

## **1.8 Zambia's History of Trade**

At independence, Zambia could be considered as one of the countries on the continent that was doing very well with regard to its economic positioning. This was largely due to the high and thus favourable copper prices and sales and the system already established by the colonialist government.<sup>12</sup> The policies adopted by the government of the new Republic then, largely reflected the vision and ambitions of the incumbent who sought to promote his philosophy of Humanism. In putting forth this philosophy, taking into account the vast resources available, the government adopted import substitution strategies as the base for economic growth and development for the nation.

With the sharp decline in copper prices and the fall of demand internationally, the Zambian economy began to decline and the government resorted to external financial institutions in order to maintain the policies it had hitherto little or no difficulty promoting. During this period, the only export commodity of concern to the government was copper and all other institutions and programs in the nation were dependent on the income generated from this.<sup>13</sup>

With the change of government in 1991, and more importantly the policy objectives, the nation moved from import substitution to outward orientation as the anchor on which economic development would rest. This approach changed the situation in the country from what had previously been the case with the government of Dr. Kaunda attempting to have all

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<sup>12</sup> Mulenga Chomba, Broadening the Tax Base to the Informal Economy in Zambia (Lusaka: Langmead and Baker. 2005) p104

<sup>13</sup> Mulenga Chomba, Broadening the Tax Base to the Informal Economy in Zambia (Lusaka: Langmead and Baker. 2005) p104

the goods required being produced or manufactured locally. The new policies ensured that as much trade as was possible would take place in the country. Certain measures were taken to ensure that the international community would be encouraged to trade with the nation and one of the most important being the easing of restrictions on land holding by non Zambians.<sup>14</sup>

## **1.9 Conclusion**

This paper is, over the next four chapters, considering the various aspects discussed above in greater detail. The main point that has been brought to the fore in this chapter is the fact that the world has seen a shift towards global economic integration as well as the encouragement of free trade and that Zambia has not been left behind. In as much as the ideas are novel and require support, it has also been shown that developing countries have continued to struggle to find their feet in the world trade system and it is therefore relevant to assess the impact that the multilateral trading system has had on these nations, particularly Zambia.

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<sup>14</sup> Mudenda, F. S. Land Law in Zambia: Cases and Materials (Lusaka: UNZA Press. 2007) p406

## **CHAPTER TWO**

### **GLOBALISATION AND FREE TRADE**

#### **2.0 Introduction**

This chapter focuses on the concepts of globalisation and free trade in greater detail as well as the precarious position in which developing countries find themselves with regard to international economic relations. Beginning with a contextual definition of globalisation and what it means for developing countries, the paper then discusses the stages of development of the modern era of globalisation. The main aim of the chapter ultimately is to consider the implications on developing countries of their continued participation in, and desire to, integrate further with the already industrialised nations.

The impact of globalisation can only be fully appreciated when integrated into an analysis of trade as trade has a very important part to play in the connections and links nations develop one with the other. For more than a century, the driving force behind globalization has been the expansion of trade in goods and services. And throughout the early decades of the 21st century, trade will continue to drive global integration, especially among developing countries.<sup>15</sup>

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<sup>15</sup> Bernard Hoekman. Development, Trade, and the WTO. (Washington DC: the World Bank. 2002) p485

## **2.1 Globalisation**

Goldin and Reinert<sup>16</sup> define globalization at a broad level as “*an increase in the impact on human activities of forces that span national boundaries.*” Economic globalization is the most common reference, which is integration of national economies into the international economy through trade, foreign direct investment, capital flows, migration and the spread of technology.<sup>17</sup> For developing countries, globalization naturally entails their relinquishing further the little control that they have and may wish to exercise in international economic relations. The inevitable effect of globalization is openness and a greater willingness to accept products being traded. It is however important to note that openness implies heightened exposure to external risk.<sup>18</sup>

Exposure to external risks is best illustrated with reference to the credit crunch which has had the consequence of throwing into recession the worlds’ hitherto strongest economies. The nature of this economic turmoil is that it is the result of risks that major banks took over a long period of time, with loans that in principle could not be repaid. This was primarily in the housing market and was compounded by excessive bonuses executives granted themselves over this period. The direct effect of this crisis has been the bankruptcy of a number of major financial institutions in developed nations. Exposing the shortcomings of global integration, any negative changes on Wall Street in the United States of America have a similar negative impact in Europe, Russia as well as the major stock markets in Asia.<sup>19</sup>

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<sup>16</sup> Ian Goldin and Kenneth Reinert. Globalization for Development (Washington: World Bank and Palgrave Macmillan. 2007) p2

<sup>17</sup> <http://en.wikipedia.org/wiki/globalisation> visited on 31<sup>st</sup> May, 2008

<sup>18</sup> Bernard Hoekman. Development, Trade, and the WTO. (Washington DC: the World Bank. 2002) p485

<sup>19</sup> The Post, 11 October 2008

Developing countries ought to be wary of the indirect effects of this crisis. The main fears are the reduction in aid and Foreign Direct Investment as the crisis continues to negatively affect the economies that are the main contributors. Developing Countries also face new challenges relating to their participation in multilateral negotiations. There is broad consensus that market access has not improved as much as expected, agricultural products continue to face high protective tariffs, as do the classic footwear, clothing, textiles and steel sectors, even after allowing for the generalised system of preferences.<sup>20</sup>

### **2.1.1 Modern Era Globalization**

Goldin and Reinert's<sup>21</sup> account of modern era globalisation dates back to 1870 and spreads it over three stages. The first stage, which went on from 1870 to about 1914, was made possible by advances in rail and ship transportation as well as telegraph communication. Colonialism was rampant and migration at a very high rate but all of this was disrupted by World War 1, the Great Depression and World War II. The second stage was from mid 1940s to mid 1970s. It was accompanied by a global economic regime developed by the Bretton Woods Conference and the establishment of GATT. The main achievements of this stage were the lowering of barriers to trade, and it saw an increase in capital flows from the United States.

A number of policies adopted by developing countries in this period limited the effects of this wave of globalization. The particular suspect policies were those of import substitution, along

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<sup>20</sup> Bernard Hoekman. Development, Trade, and the WTO. (Washington DC: the World Bank. 2002) p485

<sup>21</sup> Ian Goldin and Kenneth Reinert. Globalization for Development (Washington: World Bank and Palgrave Macmillan. 2007) pp 6-8

with other barriers to trade. The Cold War also suppressed the integration of developing countries into the world trading system. The third stage, which began in the late 1970s, has been, and still is, running and has seen the emergence of newly industrialised nations of East Asia. Technological progress in transportation, communication and information technology has aided the integration of the world economy and been of great benefit particularly to developing countries.

Of particular interest in the stages of globalization is the second stage as a number of nations were able to achieve 'developed nation' status during this period. *"It is often overlooked that the most successful 'globalizers' of an earlier era - the East Asian tigers - had to abide by few international constraints and had to pay few of the costs of integration during their formative growth experience in the 1960s and 1970s. Global trade rules essentially gave them a free ride, and capital mobility was hardly an issue. This is why these countries can hardly be considered the perfect example for today's globalization. They combined their reliance on trade with unorthodox policies such as export subsidies, domestic content requirements, import-export linkages, patent and copyright infringements, restrictions on capital flows, direct credit. These policies are now either precluded or greatly frowned upon. The environment for globalisation is today very different."*<sup>22</sup>

### **2.1.2 Conclusion**

Globalisation has been made attainable particularly by the advances in transportation and communication that make it easy and expedient to communicate with a person anywhere in

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<sup>22</sup> Bernard Hoekman. Development, Trade, and the WTO. (Washington DC: the World Bank. 2002) p8

the world. The lowering of transport costs and the easing of transit rules and customs procedures in most parts of the world has made it easier and cheaper for importers and exporters to discard political boundaries to a very large extent. The change in policy objectives of many developing countries calls for analysis of the actual impact of globalization. It may have numerous perceived benefits but caution needs to be exercised by developing countries in order that these benefits, currently not being enjoyed, may eventually be enjoyed. Even as integration aligns nations and eases restrictions in relations between or among them, the most cardinal factor in determining favourable relations is in their willingness to trade one with the other.

## **2.2 Free Trade**

Any discussion of free trade that is to progress chronologically should begin with a discussion on trade. It is not possible to appreciate free trade without an understanding of the progression of trade into free trade and the environment that causes trade to be free. A simple definition of trade is “*the business of selling with a view to profit goods which the trader has either manufactured or himself purchased*”.<sup>23</sup> The only aspect worth adding is that the trade is not restricted only to goods but may also involve services.<sup>24</sup> The original form of trade was barter, but with the introduction of money into commerce, modern traders now negotiate through the medium of money. International trade is the exchange of capital, goods and services across borders.<sup>25</sup> Trade essentially takes two forms; either market forces, unhindered,

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<sup>23</sup> Bone, S. Osborn's Concise Law Dictionary, 9<sup>th</sup> edition (London: Sweet & Maxwell. 2000) p381

<sup>24</sup> <http://en.wikipedia.org/wiki/trade> visited on 19<sup>th</sup> July, 2008

<sup>25</sup> [http://en.wikipedia.org/wiki/International\\_Trade](http://en.wikipedia.org/wiki/International_Trade) visited on 19<sup>th</sup> July, 2008

control trade or the government, as mediator, ensure that no party is fraudulently disadvantaged in the market place.

International trade is similar to domestic trade in that the reasons for trading and the behavior of parties involved in the trade do not change fundamentally depending on whether or not trade is across a border. The main difference being that international trade is more costly than domestic trade because of the additional costs such as transport, tariffs and non tariff barriers, time costs due to border delays and costs associated with country differences such as language, the legal system or different cultures.<sup>26</sup>

Free trade in this regard is a situation where trade is liberalized to the point where all or most barriers to trade are removed and it is allowed to flourish unhampered by interference of state machinery.<sup>27</sup> Trade liberalization in this instance is intended to minimize the effects on international trade of the costs associated with country differences so that importers and exporters are encouraged to flourish.

### **2.2.1 Barriers to Free Trade**

The introduction of money into commerce had the important effect of enabling governments to impose restrictions on trade. Whereas in times of barter the only restriction was with the rate at which the goods to be exchanged could be manufactured, the introduction of money

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<sup>26</sup> [http://en.wikipedia.org/wiki/International\\_Trade](http://en.wikipedia.org/wiki/International_Trade) visited on 19<sup>th</sup> July, 2008

<sup>27</sup> Ian Goldin and Kenneth Reinert. Globalization for Development (Washington: World Bank and Palgrave Macmillan. 2007) p47

meant a medium through which the value of the goods could be exacted and a percentage of that value charged as a duty. This then meant that the government could gain revenue through these duties and further created barriers to trade.

Government imposed restrictions, or barriers to free trade, include tariffs, quantitative restrictions (or quotas), internal taxes, subsidies, customs procedures and other duties, levies or regulations that have a tendency to make trade more tedious.<sup>28</sup> Free trade is a situation where the trade in goods and services between and within nations flows unhindered by these barriers. They tend to increase the prices of commodities without a corresponding increment in quality. The manufacturer or distributor simply includes the amounts spent on such levies in the production or acquisition cost which is passed on to the consumer to bear. It is worth noting that in recent times, technical barriers to trade have found prominence particularly in developed countries. The main form these barriers have adopted is expressed in inordinately high standards required of goods being introduced into the particular markets of developed countries.

### **2.2.2 Justifications for free trade**

It is argued that the benefits of free trade are expressed mainly by its ability to alleviate poverty by expanding markets, creating employment opportunities, promoting competition, raising productivity and also providing new ideas and technologies.<sup>29</sup> As has been stated

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<sup>28</sup> [http://encarta.msn.com/encyclopedia\\_761574787\\_3/Foreign\\_Trade.htm](http://encarta.msn.com/encyclopedia_761574787_3/Foreign_Trade.htm) visited on 19<sup>th</sup> July, 2008

<sup>29</sup> Ian Goldin and Kenneth Reinert. Globalization for Development (Washington: World Bank and Palgrave Macmillan. 2007) p47

earlier,<sup>30</sup> a convincing argument in favour of free trade is that it promotes a mutually profitable division of labour and makes possible higher standards of living all over the globe.

Though the phenomenon of free trade has not been achieved in total in any territory across the globe, it is however necessary to consider its importance and impact because the policies of developing countries have over the years shown a shift towards a desire to attain free trade. Trade, and in particular free trade, thrives best in an environment where the theory of comparative advantage is allowed to operate unhampered. The idea of comparative advantage is simple and intuitive. If our country can produce some set of goods at lower cost than a foreign country, and if the foreign country can produce some other set of goods at a lower cost than we can produce them, then clearly it would be best for us to trade our relatively cheaper goods for their relatively cheaper goods. In this way both countries may gain from trade.<sup>31</sup>

### **2.3 Developing Countries and Global Free Trade**

The first consideration here should be the relationship that should subsist between developing countries and the already developed nations. The importance of establishing the nature of the relationship is that an understanding of it will aid in placing the benefits attainable in proper perspective. If the nature of the relationship is such that developing countries seek a source from which they can import goods and obtain aid and nothing more then the benefits of integration will be limited as such but if the nature of the relationship is one that is mutually

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<sup>30</sup> John H. Jackson et al. Legal Problems of International Economic Relations, 3<sup>rd</sup> edition (Minnesota: West Publishing Co. 1995) p14

<sup>31</sup> <http://internationalecon.com/Trade/Tch40/T40-0.php> visited on 31<sup>st</sup> May, 2008

beneficial in that it is expected of developed nations that they also import unhindered both raw materials and finished goods from developing countries then developing countries cannot be expected to settle for less. After the collapse of the 2008 Doha round of negotiations, it has become evident that what developing countries seek is the latter which is mutual benefit.

In light of this relationship, the impact of globalisation and free trade on developing countries has been perceived to be one that is positive. The main contribution to the world trading system of developing countries has historically been the provision of raw materials. The importance of these raw materials cannot be overstated but a factor more important is that with the availability of local markets in developing countries to products from developed countries, consumers in developing countries are made to spend huge sums of money on products made from the same raw materials they exported.

While the benefits from globalisation remain attainable by developing countries, the real battle remains with their struggle to break the infrastructure established by the colonial governments. Colonialism occurred in the first stage of globalisation and established links that led to interdependence. The main aim of colonialism was for the developed nations to establish areas from which they could benefit from the available natural resources. In line with the same, Industrialised countries trade policies continue to obstruct export diversification and reduce incentives for processing commodities, with serious implications for export growth of products with greater value added, and commitments on subsidies limit the scope for implementing support policies for growth and export.<sup>32</sup>

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<sup>32</sup> Bernard Hoekman. Development, Trade, and the WTO. (Washington DC: the World Bank. 2002) p485

This state of affairs can be seen by the failure of the Lome Convention over 25 years to diversify African Caribbean Pacific (ACP) economies. *“It was unrealistic for the Convention to expect countries to diversify within the framework through which, as the European Union...itself acknowledged, Europe sought to retain these countries as providers of raw materials and overseas markets. Europe offered stabilisation of commodity prices and technology transfer, in exchange for ACP countries to go on playing the same role that they played for Europe during the era of colonialism.”*<sup>33</sup>

Without pre-empting the discussion of the next chapter, it is also worth noting that it has been stated that the Trade Related Aspects of Intellectual Property Rights (TRIPS) Agreement is intended to encourage research and development in both developed and developing countries. But this is a debateable viewpoint and a more appealing argument is that such an agreement is a mere tool of oppression used by developed countries. This is because developing countries have no capacity to compete with developed countries in the rate of advancement of technology and have no financial capacity to acquire the patented inventions so as to aid local industries. The end result is that technology is only available for use when the period of protection nears expiry and better equipment has been invented and is in use in developed nations. This acts as a bar to free trade in that though market access may have been granted, the nature of production of the products entails that they will not be internationally competitive and this thereby limits the available market without any express prohibition of trade.

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<sup>33</sup> Tetteh Hormeku, 'Trading in Futures: EU-ACP Relations' Panos briefing 13 (November 1998), 8

## 2.4 Conclusion

The words of Kofi Annan at his final speech as Secretary General of the United Nations in the United States correctly state the current trend of Globalisation and the direction we ought to consider taking. *“It is not realistic to think that some people can go on deriving great benefits from globalization while billions of their fellow human beings are left in abject poverty or even thrown into it. We have to give our fellow citizens not only within each nation but in the global community, at least a chance to share in our prosperity. Much of that can only be done by the people and governments in developing countries themselves...foreign aid by itself is not enough, today we realise that market access, fair terms of trade and a non-discriminatory financial system are equally vital to the chances of poor countries.”*<sup>34</sup>

The focus of this chapter has been the perceived benefits of globalisation and free trade and the continued failure by developing countries to profit from them. This benefit has however eluded developing countries because of the continued marginalisation by developed countries and their prevention of developing countries’ chances of diversification and use of technology to promote the development of industries. The main challenge that developing countries have is to enter the mainstream of globalisation and to ensure that all barriers to trade in products of particular interest to them are removed by the developed countries.

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<sup>34</sup> Kofi Annan’s final speech, presented 11<sup>th</sup> December, 2006 (available at <http://news.bbc.co.uk/2/hi/americas/6170089.stm>) visited on 18<sup>th</sup> June, 2008

## **CHAPTER THREE**

### **THE MULTILATERAL TRADING SYSTEM**

#### **3.0 Introduction**

This chapter focuses on the concept of Multilateralism. Multilateralism has provided and continues to provide the basis on which nation states can enter into concessions with other states with the assurance that those concessions will be adhered to and in the event that they are not, that the regulatory system will provide a remedy for the prejudiced state through its dispute resolution mechanism. The significance of this is especially appreciated by the developing nations because they, as a block, have continued to find prominence and voice in multilateral negotiations.

In light of the increasing importance of the multilateral trading system in looking out for the welfare of developing countries, it then becomes necessary to consider its development and the institutions spearheading it. This chapter, continuing with the theme of interdependence caused by globalisation and international trade, concentrates on the international regulatory mechanisms and how it affects the development prospects of developing countries. This chapter begins by tracing the development of the multilateral trading system and increase in participation of developing countries with regard to decision making and trade negotiations.

Trade between two traders is referred to as bilateral trade, whereas trade among more than two traders is called multilateral trade. Multilateralism simply refers to a number of countries working in concert on a given issue. With regard to trade, the multilateral trade regime is governed mainly by the agreements creating the International Monetary Fund, the

International Bank for Reconstruction and Development and the General Agreement on Tariffs and Trade. The importance of these institutions was stated and emphasized in the mid 1940s when the initial agreements creating these institutions were agreed upon and entered into.

### **3.1 Development of the Multilateral Trading System**

At the core of contemporary international regulation of economic relations is a group of institutions and multilateral international agreements which are termed the 'Bretton Woods System'.<sup>35</sup> To understand international regulation of economic relations, and to appreciate the continued integration of economies, it is essential to study the Bretton Woods System which comprises the General Agreement on Tariffs and Trade, the International Monetary fund and the International Bank for Reconstruction and development (or World Bank).

The development of the multilateral trading system can be traced to the end of the Second World War and the Bretton Woods Meeting of 1944 which was the beginning of the second phase of modern era globalisation and played a major role in shaping the current global trends in the monetary system and international investment. The conference of 1944 developed the institutions and agreements on the financial side of economic relations, namely the International Monetary Fund (IMF) and the International Bank for Reconstruction and Development (IBRD or World Bank).<sup>36</sup>

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<sup>35</sup> John H. Jackson et al. Legal Problems of International Economic Relations, 3<sup>rd</sup> edition (Minnesota: West Publishing Co. 1995) p279

<sup>36</sup> John H. Jackson et al. Legal Problems of International Economic Relations, 3<sup>rd</sup> edition (Minnesota: West Publishing Co. 1995) p279

The General Agreement on Tariffs and Trade (GATT) was developed at a separate series of meetings also held in the 1940s. GATT is incorporated into the Bretton Woods System because the Bretton Woods conference looked forward to the creation of an ancillary institution that would reduce obstacles to international trade and give effect to the principle of multilateral non-discriminatory trade.<sup>37</sup> While the intention of the conference had been for the IMF to repair the disintegration that had befallen the international monetary system, the World Bank was designed to stimulate and support foreign investment which had declined to insignificant levels and the GATT agreement was intended to reverse the protectionist and discriminatory tendencies that had multiplied during the pre-war depression years.<sup>38</sup>

During these conferences, the influence of developing countries was non-existent due to the fact that most territories were either colonies or they had protectorate status but either way they had no influence in international economic relations. Even though the influence of developing countries began to be felt in the Kennedy Round of GATT negotiations in the mid 1960s, the significance of these agreements in the advancement of integration that developing countries would subsequently benefit from cannot be over emphasized.

## **3.2 GATT/WTO**

The General Agreement on Tariffs and Trade (GATT) was seen as an important step in facilitating world trade. The general agreements' main objective was the reduction of barriers

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John H. Jackson et al. Legal Problems of International Economic Relations, 3<sup>rd</sup> edition (Minnesota: West Publishing Co. 1995) p279

John H. Jackson et al. Legal Problems of International Economic Relations, 3<sup>rd</sup> edition (Minnesota: West Publishing Co. 1995) p279

to international trade thus making it freer. This was achieved through the reduction of tariff barriers, non-tariff barriers and technical barriers to trade through a series of negotiation rounds leading to concessions nations granted each other. GATT was a treaty, and not an organization and this created difficulties in its operations. The functions of the GATT were taken over by the World Trade Organization (WTO) which was established during the eighth round of negotiations in the mid 1990s.<sup>39</sup>

The WTO is an international organisation designed to supervise and liberalise international trade.<sup>40</sup> The WTO is the only global international organization dealing with the rules of trade between, and among, nations.<sup>41</sup> It is responsible for negotiating and implementing new trade agreements, and is in charge of policing member countries' adherence to all the WTO agreements. The goal is to help producers of goods and services, exporters, and importers conduct their business in a more conducive environment.<sup>42</sup>

### **3.2.1 Importance of GATT/WTO for Developing Countries**

GATT has a number of programs that are very important in looking out for the welfare of developing countries. As highlighted earlier,<sup>43</sup> these programs and policies include the Trade Policy Review Mechanism (TPRM), the Generalized System of Preferences (GSP) and the

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<sup>39</sup> John H. Jackson et al. Legal Problems of International Economic Relations, 3<sup>rd</sup> edition (Minnesota: West Publishing Co. 1995) p289

<sup>40</sup> [http://en.wikipedia.org/wiki/world\\_trade\\_organisation](http://en.wikipedia.org/wiki/world_trade_organisation) visited on 19<sup>th</sup> July, 2008

<sup>41</sup> John H. Jackson et al. Legal Problems of International Economic Relations, 3<sup>rd</sup> edition (Minnesota: West Publishing Co. 1995) p290

<sup>42</sup> [http://www.wto.org/english/thewto\\_e/whatis\\_e/whatis\\_e.htm](http://www.wto.org/english/thewto_e/whatis_e/whatis_e.htm) visited on 6<sup>th</sup> August, 2008

<sup>43</sup> Ibid at page 10

Dispute Settlement Body (DSB) under the Dispute Settlement Understanding. Each of these programs deserves commendation for the impact on improving the welfare of developing countries by granting market access under the GSP, ensuring that the policies adopted by developed nations under the TPRM do not adversely affect developing countries and most importantly that developing countries now have an independent tribunal which they can present their complaints before and receive fair adjudication.

The importance of entering into multilateral relations anchored on GATT is that all contracting parties will have to adhere to the core principles of the agreement. The core principles are contained in Articles 1 and 3 of GATT. These articles refer to the most favoured nation treatment and national treatment respectively. Article 1 is intended to prevent discrimination in the way that contracting parties relate. This is anchored on the premise that the treatment to be given to all other contracting parties should be that given to the most favoured nation. *“It provides that government import or export regulations should not discriminate between other countries products”*.<sup>44</sup> Article 3 prevents importing nations from unfairly preventing competition between domestically produced goods and imported ones. This is achieved by ensuring that all contracting parties treat imported goods as though they were locally produced when the goods are made available to the public.

Article 2 is as important as the three stated above. Article 2 provides for member countries undertaking to adhere to the rules under GATT and WTO and also that they will not breach the concessions entered into with other nations. This is important particularly for developing

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<sup>44</sup> John H. Jackson et al. Legal Problems of International Economic Relations, 3<sup>rd</sup> edition (Minnesota: West Publishing Co. 1995) p290

countries as it ensures that they will not be bullied as a result of their disadvantaged position in international economic relations. The most significant benefit developing countries have obtained from the agreement is contained in Part IV of the agreement which calls for 'special and differential treatment' of developing countries and primary products from them.

The GATT/WTO system is very important for the welfare of developing countries because it has shown, particularly in the last two or three decades, greater participation by developing countries in multilateral negotiations. Greater participation has meant the ability to include important aspects of trade that may influence the economic fortunes of these developing countries in a positive manner. The greater strength of these developing countries and the ability to influence change in their favour has been brought about by working in concert when negotiations are in progress. An organised block of developing countries has had and will continue to have a greater effect on influencing decisions than each member state could ever have if it worked in isolation when negotiating.

### **3.3 The IMF**

The International Monetary Fund was conceived primarily as a supervisory institution to provide international monetary corporation and to facilitate the growth of international trade. This was to be achieved through maintenance of monetary exchange stability and assisting member countries who are experiencing balance of payment problems. Upon membership, each country will deposit sums of money called a quota subscription. This quota subscription determines the resources available from the fund in times of crisis. The quotas also determine

the voting rights of members and member countries with larger economies and greater voting rights are in a better position to influence the decisions of the fund.<sup>45</sup>

The IMF grants loans to countries with balance of payment problems. Balance of payment problems arise when a country fails to earn sufficient foreign exchange, through exports or provision of services, to pay for its imports.<sup>46</sup> In return for IMF assistance, countries that seek to borrow money must implement a set of economic reforms aimed at overcoming their balance of payment problems. Loans are disbursed in instalments and payment is tied to the countries' compliance with the structural adjustment policies. *"The IMF can monitor economic performance and coordinate short term relief for liquidity problems, dampening the severity of a financial crisis."*<sup>47</sup> In order that the IMF may grant financial aid to any country, it requires that certain structural conditionalities be adhered to. Structural conditions are economic and political reforms to the structure of a borrowing nation's economy initiated at the request of the IMF. Such conditions include deregulation and privatisation of public enterprise and are different from quantitative conditions such as the inflation or deficit targets.<sup>48</sup>

Decision making in the IMF is the biggest challenge developing nations face in ensuring that tailor made policies are implemented as part of the structural adjustment that is proposed. The weakness of developing countries is in the fact that they have small economies and are unable

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<sup>45</sup> <http://www.brettonwoodsproject.org/art-559953> visited on 29<sup>th</sup> November, 2009

<sup>46</sup> Michael P. Todaro. Economic Development (New Delhi: Dorling Kindersley Pvt. Ltd. 2008) p632

<sup>47</sup> World Development Report 1999/2000. New York: Oxford University Press

<sup>48</sup> <http://www.brettonwoodsproject.org/art-559953> visited on 29<sup>th</sup> November, 2008

to significantly increase quota subscriptions they make to the fund. A reorganisation of the decision making system by the use of advisors to give an accurate account of the economic, social, cultural and historical perspectives of each nation will make reform more appropriate. It should however be noted that the IMF often receive the short end of the stick in that they receive the blame for making the crisis worse when in actual fact this blame placed on the overshadows the real reason why the borrowing nation found itself in the crisis in the first place.

### **3.4 The World Bank**

The World Bank exists to encourage poor countries to develop by providing them with technical assistance and funding for projects and policies that will realize the countries' economic potential. The Bank views development as a long term, integrated endeavour. The structure of the World Bank is similar in many ways to that of the IMF. The main points of similarity are the joint ownership by the members and the fact that voting power is proportional to the annual contribution of each member, which in turn corresponds with the size of the economy.<sup>49</sup>

Despite these similarities in ownership and influence of the two institutions, each has a clear mandate that distinguishes it from the other. The main distinction is in the fact that the IMF has a mandate to supervise or monitor external financial transactions of its members whereas the World Bank focuses on internal reconstruction and development. The primary purpose of

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<sup>49</sup> Michael P. Todaro. Economic Development (New Delhi: Dorling Kindersley Pvt. Ltd. 2008) p662

the World Bank is to promote economic growth and prosperity by providing funds for investment in projects that help raise productivity and output.

In order that developing countries may become self sustaining and achieve economic development, the World Bank provides financial and technical assistance for the expansion of markets, construction of infrastructure and creation of growth oriented institutional framework. There has however been a dramatic increase in the amount of assistance for purposes of structural adjustment.<sup>50</sup> This assistance is designed to promote a fundamental restructuring of economies of countries plagued by chronic trade and budget deficits. The conditionalities are implemented to ensure that the money lent will be spent in accordance with the goals of the loan.<sup>51</sup>

### **3.5 Effect of the Operation of the three Institutions on Developing Countries**

The roles played by the three institutions stated in summary with reference to the effect they have on developing countries are as follows: GATT/WTO is responsible for reduction of barriers to trade and for ensuring that states do not deviate from their obligations under the agreement. The IMF monitors economic performance and coordinates short term relief for liquidity problems, dampening the severity of a balance of payment crisis. The financial assistance is accompanied by conditions that are intended to reform the economy of the recipient country so as to avoid such crises in the future. The World Bank is primarily

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<sup>50</sup> Michael P. Todaro. Economic Development (New Delhi: Dorling Kindersley Pvt. Ltd. 2008) pp662-4

<sup>51</sup> <http://en.wikipedia.org/wiki/Conditionalities> visited on 23<sup>rd</sup> October, 2008

concerned with development of infrastructure by the provision of financial and technical assistance for internal development to avoid chronic budget deficits and trade imbalances. The assistance also comes with structural adjustment conditions intended to steer the nation to a better position in which the difficulties being dealt with will be avoided in future.

For developing countries, the effect of the operation of these three institutions limits the possible economic trends that the nation may itself take in order to abate its economic woes. The failure of the DOHA round of negotiations shows the reluctance and failure by the GATT/WTO system to ensure the increased participation of developing countries in international trade by prioritising the removal of technical barriers to trade particularly in the agricultural and textile industries.

The IMF and World Bank through conditionalities implement free market programs and policies via the medium of structural adjustment.<sup>52</sup> These programs include internal changes particularly in privatisation and deregulation, as well as external changes, especially the reduction of barriers to trade. Nations that fail to comply with these conditions or programs are subject to severe fiscal discipline. This may be considered to be bullying and is to the detriment of the developing countries in that because they need the financial assistance, the conditions attached to it become secondary and will be applied regardless of the perceived impact. Even though the developing country regards it in its best interest not to apply the structural adjustment policies, it will still have to apply them because failure to do so will attract some form of repercussion. This could be in the form of approval or continuation of funding for there is an explicit link between the approval or continuation of the IMF's

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<sup>52</sup> [http://en.wikipedia.org/wiki/structural\\_adjustment](http://en.wikipedia.org/wiki/structural_adjustment) visited on 19<sup>th</sup> August, 2008

financing and the implementation of certain specific aspects of the government's policy program.<sup>53</sup>

From their creation in the mid 1940s, GATT was intended to reverse the protectionist and discriminatory trade practices that had multiplied during the pre war depression years, the IMF and GATT were to collaborate on exchange policies and trade policies. In combination, the IMF, World Bank and GATT were designed to help the advanced industrial countries achieve the multiple objectives of full employment, freer and expanding trade, and stable exchange rates. The shaping of the post war international economy can therefore only be done by analysis of whether these institutions have been mutually supportive or whether they have been at cross purposes.<sup>54</sup>

The relationship among these institutions is mutually supportive. This creates a link among trade, investment and balance-of-payment policies. A country has to be a member of the IMF and be governed by its principles before it can be a member of the World Bank. In similar fashion, certain derogations from the GATT rules can be made in the name of balance-of-payment problems<sup>55</sup> but only with the approval of the IMF.<sup>56</sup> This makes it difficult for developing countries to avoid or exclude entirely the operation of any of these institutions in so far as it attempts to improve its development position through trade.

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<sup>53</sup> International Monetary Fund, "Conditionality in Fund-Supported Programs: Policy Issues," Policy Development and Review Department (Washington: International Monetary Fund, 2001) available at <http://www.imf.org> visited on 23<sup>rd</sup> October, 2008

<sup>54</sup> John H. Jackson et al. Legal Problems of International Economic Relations, 3<sup>rd</sup> edition (Minnesota: West Publishing Co. 1995) p279

<sup>55</sup> Under Article XII of the GATT agreement

<sup>56</sup> John H. Jackson et al. Legal Problems of International Economic Relations, 3<sup>rd</sup> edition (Minnesota: West Publishing Co. 1995) p281

### **3.6 Conclusion**

The conditionalities of the IMF and the World Bank have continued to aid the objectives of the GATT/WTO system of making trade freer by prescribing free market policies for nations that require financial or technical assistance from the two institutions. The impact of the relationship between the two should be a positive one. The conditions attaching to the assistance granted should take on a more human face and should take into account the situation on the ground and have input from the governments that require the assistance.

The argument that the conditionalities do more harm than good has found prominence among scholars and should prompt an overhaul of the international multilateral system for trade. Developing countries have a lot that they can benefit from these institutions and such benefit can and should be mutual even to the developed nations. The best possible mode in which the needs of developing countries can be adequately catered for in these institutions is by remodelling the decision making powers so as to grant developing countries a more advanced role in determining the best policies for the advancement of economic development.

For developing countries, external trade should be viewed as a crucial element of an overall development strategy towards sustainable growth and development. It should contribute to the generation of full employment, fulfilment of needs in areas of food, health, education, and all of this should be done in the context of environmental sustainability. With regard to the operations of the Bretton Woods Institutions, trade policy should be contingent on the specific needs of each country depending on its level of development. A one size fits all approach will be potentially hazardous and is likely to fail in most of the countries.

## **CHAPTER FOUR**

### **THE POSITION OF ZAMBIA**

#### **4.0 Introduction**

The discussions of the previous two chapters have focussed on developing countries in general and how globalization and the multilateral trading system respectively have affected them and their prospects for economic development. The focus of this chapter is on how Zambia has handled the same.

Sustainable development is the ultimate aim that is sought to be achieved by the integration of economies of developing countries *inter se* as well as with more advanced or developed economies. Zambia, after adopting and promoting humanism and import substitution policies for the most part of its early years as an independent state, has opted to now remodel its policies to outward oriented policies that promote and advance liberal market economics and a state in which the role of government is to act merely as regulator. In order that this role as regulator may be fully appreciated in the assessment of the impact of globalization and free trade, this chapter will now advance the proposition that it is the duty of the government to ensure, through its organs, that the effects of globalisation and free trade are beneficial to its citizens and the state in general.

In highlighting the importance of the state, the chapter's main focus first and foremost is to highlight which areas of the state and economy are affected by globalisation and free trade and discuss each of these areas with regard to the situation prevalent in Zambia. The situation

in Zambia is being discussed mainly beginning from 1991 when the policies adopted by the Movement for Multiparty Democracy (MMD) government began to reflect a greater acceptance of openness and integration into the world economy.

## **4.1 Main Areas of Concern**

The main areas of concern when one considers the impact and implications of continued global integration are to be found in a number of sectors and how these have a bearing on the ordinary individual. The main areas to be considered by this chapter include among others (a) the quality of governance in the nation. This is to be considered mainly from the point of view of accountability and transparency (b) the poverty levels in the country (c) employment levels (d) development of entrepreneurial skills and productivity of the informal sector (d) the amount of trade being conducted (e) the extent to which the growth in population has been catered for by the available resources and external support (f) technological transfer (g) availability of more and better goods to the average person (h) diversification of the economy (i) development of local industry (j) is the multilateral trading system catering for the needs of the nation. These factors will now be considered in some detail with regard to Zambia and the chapter will determine whether or not they each have had a positive or negative impact on the economy and society in general.

### **4.1.1 Positive developments after 1991**

**4.1.1.1 Nature of Governance** - Poor governance is the principle cause of poverty particularly when there is no access to justice, delivery of adequate public services or control of corruption. The nature of governance in the nation from independence until the present has

left much to be desired though the government deserves commendation on a number of issues. Of particular significance are the public service management program implemented in September 2006 intended to enhance the delivery of services for the people of Zambia as well as the creation of the Task Force on Corruption that has had a number of successes in ensuring the prosecution for corruption of a number of high profile individuals chief among them the former head of state Dr. Fredrick T. J. Chiluba. It can be stated that progress is being made towards the attainment of transparent and accountable governance.

**4.1.1.2 Poverty levels** - As stated earlier, Goldin and Reinert<sup>57</sup> have seen globalisation as a five faceted concept which, if managed in the right way can bring development in all countries. These five facets are trade, aid, finance, migration and ideas. The utilization of these facets can and should reduce poverty through empowerment of citizens to carry out activities that will increase their sources of sustenance as well as provide them with financing and new areas of interest. According to the Central Statistical Office (CSO), the Living Conditions Monitoring Surveys conducted from 1991 to 2006 have shown that the incidence of poverty has reduced over the years. The results show that the incidence of poverty declined from 70 percent in 1991 to 65 percent in 2006 though it rose to 73 percent in 1998.<sup>58</sup> The gains of this reduction can be noticed in rural areas, where the incidence of poverty reduced from 88 percent in 1991 to 78 percent in 2006.<sup>59</sup>

**4.1.1.3 Employment levels** – another area of interest is with regard to the levels of employment. Statistics available suggest that the proportion of the unemployed among persons aged 12 years and above for the nation was 14 percent as of 2006. Urban areas

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<sup>57</sup> Ian Goldin and Kenneth Reinert. Globalization for Development (Washington: World Bank and Palgrave Macmillan. 2007) p9

<sup>58</sup> Mulenga Chomba, Broadening the Tax Base to the Informal Economy in Zambia (Lusaka: Langmead and Baker. 2005) p107

<sup>59</sup> <http://www.zamstats.gov.zm/lcm.php> visited on 13<sup>th</sup> January, 2009

recorded higher unemployment rates (32 per cent) than rural areas (5 per cent)<sup>60</sup> and this can be explained by considering the effects of rural-urban migration. Copperbelt and Lusaka provinces recorded higher unemployment rates than the other provinces with 31 percent each. The main area of employment has remained the agricultural sector which accounts for about 85 per cent of total labour force, followed by services which account for 9 per cent and finally industry which accounts for 6 per cent. The total labour force from all the stated sectors as of 2007 is 4.989 million people<sup>61</sup> and this shows that the employment rates have remained above 80 per cent for persons above the age of 15.<sup>62</sup> It is however difficult to state whether or not these statistics remain true in light of the recent international economic crisis that has adversely affected numerous multinational businesses.

**4.1.1.4 The informal sector** – the informal sector has shown tremendous growth over the years and has been seen as the avenue through which the limited formal employment opportunities are being ameliorated. Of the 80 percent of economically active persons above the age of 15, 43 percent were self employed, 17 percent were paid employees, 38 percent were unpaid family workers and 1 percent were employers.<sup>63</sup> The informal sector accounts for over 90 per cent of the working population.<sup>64</sup> With the constrained formal employment market, the informal sector is rapidly becoming the mode of poverty alleviation and the exchange of ideas internationally through continued integration by better communication, internet facilities and international travel the sector has continued to grow and expand.

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<sup>60</sup> <http://www.zamstats.gov.zm/lcm.php> visited on 13<sup>th</sup> January, 2009

<sup>61</sup> 2008 CIA World Factbook available at [http://www.theodora.com/wfbcurrent/zambia/zambia\\_economy.html](http://www.theodora.com/wfbcurrent/zambia/zambia_economy.html) visited on 17<sup>th</sup> January, 2009

<sup>62</sup> Survey conducted by the Central Statistical Office and the Ministry of Labour and Social Security available at <http://www.zamstats.gov.zm> visited on 13<sup>th</sup> January, 2009

<sup>63</sup> <http://www.zamstats.gov.zm> visited on 13<sup>th</sup> January, 2009

<sup>64</sup> Silja Klepp. August 24<sup>th</sup> 2006. Available at <http://www.theglobalist.com/storyId.aspx?StoryId=4650> visited on 17<sup>th</sup> January, 2009

**4.1.1.5 Trade** – the amount of trade being carried out has increased over the years. This though is overshadowed by the fact that the nation has continued to suffer balance of payment problems. As for instance, trade statistics for the month of November show that Zambia recorded a trade deficit valued at K 337.2 billion. This means that the country exported less in November 2008 than it imported in value terms.<sup>65</sup> 2007 statistics available in the CIA Factbook reflect the same with the reported annual trade deficit of about 1.024 billion United States Dollars.<sup>66</sup> The 2006 Exporter Audit Report of the Zambia Development Agency shows that there has been an increase in trade activity in both traditional and non-traditional exports.<sup>67</sup> Non-traditional exports saw an increase in export of building products, engineering products, processed foods, Handicrafts, Horticulture products, animal products and leather products. More can still be done to increase the amount of exports especially considering the fact that Zambia has an exporter ranking of 109.<sup>68</sup>

**4.1.1.6 Economic indicators** – a number of factors here need to be considered and how they have each been affected by the integration into the global economy. **The inflation rate** for 2007 was at 10.7 per cent<sup>69</sup> whereas the year end inflation rate for 2008 was about 16 per cent due to the economic crisis of 2008 that adversely affected productivity in the mining sector. The reduction in inflation rates over the years has had a positive impact on reducing bank interest rates particularly for those that seek to borrow. **Bank interest rates** are essential because they determine the availability of resources for investment within the economy and also help spur up trading activity and keep businesses afloat due to the fact that the capital does not attract high interest returns and gives the borrower a longer period of time to

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<sup>65</sup> <http://www.zamstats.gov.zm> visited on 13<sup>th</sup> January, 2009

<sup>66</sup> [http://www.theodora.com/wfbcurent/zambia/zambia\\_economy.html](http://www.theodora.com/wfbcurent/zambia/zambia_economy.html) visited on 17<sup>th</sup> January, 2009

<sup>67</sup> Zambia Development Agency. Exporter Audit Report 2006. Lusaka: August 2007 at p10

<sup>68</sup> [http://www.photius.com/rankings/economy/exports\\_2008\\_0.html](http://www.photius.com/rankings/economy/exports_2008_0.html) visited on 17<sup>th</sup> January, 2009

<sup>69</sup> [http://www.theodora.com/wfbcurent/zambia/zambia\\_economy.html](http://www.theodora.com/wfbcurent/zambia/zambia_economy.html) visited on 17<sup>th</sup> January, 2009

establish the business and make it profitable. The Gross Domestic Product growth rate for 2007 was stated at 5.3 per cent and this is a great achievement when considered with the fact that the economy has supported a **relatively stable currency** over the last few years. All these factors have aided the growth of trade and the fight against poverty.<sup>70</sup>

### 4.1.2 Negative Effects after 1991

**4.1.2.1 Industry** – this sector has been the worst affected by the integration of our economy into the world economy and the embracing of free trade policies. The immediate effect of participation in mainstream globalization via the policies of the WTO, IMF and World Bank was the immediate privatisation of the parastatal corporations and the withdrawal of the state from the provision of most goods and services. Privatisation should have brought about the result of continued production and return to profitability of most of the industries but due to the fact that most of them were heavily subsidised, it led to their closure and greater dependence on importation of goods.

The implication of integration has been the provision of manufactured goods that are cheaper than those produced locally and as a result of failure to effectively compete a number of industries have been shut down. Failure to compete has been attributed to a number of reasons among which are (a) the high cost of production which translates into higher prices. The cost of production is raised primarily by the high fuel prices which in turn make it costly to acquire inputs but the low inflation rates achieved in recent years help cushion these effects (b) the lack of export readiness capacity which culminates in the production of poor

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<sup>70</sup> <http://www.cia.gov/library/publications/the-world-factbook/fields/2116.html> visited on 17<sup>th</sup> January, 2009

quality products and reduces productivity (c) tariff and non tariff barriers in markets of export interest also serve as a deterrent to the growth of our industries. These barriers are in the form of strict rules of origin, strict sanitary and phytosanitary measures, certification, minimum quality standards and quotas. Zambian products are often unable to meet these minimum standards and are thus marginalised (d) another area in which Zambian products are disadvantaged is with the lack of suitable domestic testing laboratories and other facilities. Domestic facilities that are available are not able to support industries that seek to expand their exports and those that seek testing in other jurisdictions acquire great cost in doing so.<sup>71</sup>

**4.1.2.2 Transport and communication** – the development of transport and communication has aided the continued integration of the economy into the world economy but this is with a number of reservations duly noted. The transport infrastructure in place has continued to act as a basis for continuance of high prices of commodities due to the high cost of transportation of the goods. The rail system is grossly inefficient and stricken with insufficient rail infrastructure; the aviation system continues to be very expensive due to the high cost of jet fuel and the road network leaves much to be desired especially when considered from the point of view of feeder roads which make provincial centres inaccessible and this in turn makes it very difficult to collect crops from remote areas. However, the multilateral trading system deserves commendation for the transit rules put in place to aid the passage of goods through member states. They have reduced the cost of passage through different territories as well as the time that is spent clearing the said goods making it more practicable to export perishables in the form of fresh fruit, vegetables and flowers such as roses.

**4.1.2.3 Multilateral trading System** – the multilateral trading system has continued to advocate for the full integration into the world economy of developing countries, Zambia

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<sup>71</sup> Zambia Development Agency. Exporter Audit Report 2006. Lusaka: August 2007 at p32

inclusive. Despite this, it could still be stated that the system as set out internationally is working against the aspirations of developing states. This is considered so because the triangular relationship established by the IMF, the World Bank and the GATT/WTO system has continued to advocate openness while failing to secure markets for the produce of the developing economy. Concessions at international level are intended to secure obligations from one state in exchange for other undertakings from other states so that the relationship is mutually beneficial and rewarding for all the parties but as things stand, particularly considering the failure of the DOHA round, developing countries are being sidelined continually on products important for their well being.

**4.1.2.4 Diversification of the economy** – the continued failure to successfully establish sectors other than the mining sector to drive the economy has been a source of frustration to the nation. The nation has the potential to develop industry and Agriculture but has struggled to do so and this fact has been made evident by the adverse impact on the economy of the fluctuation of the price of copper due to the global economic crises of 2008. Diversification can only be made possible by sharing ideas with other nations as well as the transfer of relevant and efficient technology that can be used not only to spur productivity in other sectors but also to make them effective, efficient and competitive. The state of the economy requires that it be spread across a larger base so that the complimentary success of each sector will ensure growth that will alleviate poverty.

The positive and negative aspects of integration as viewed from the nation show how the nation has been affected by its attempts to benefit from the knowledge attainable by the continued integration into the international economy.

## **4.2 Current Institutional Framework Regulating Trade Practices**

In light of the effects that the opening up of the economy has had on the nation as a whole and on particular sections of society in particular, it is then necessary to consider what legislative machinery has been put in place to ensure that the effects of integration are kept in check. The Control of Goods Act, The Bureau of Standards Act, The Zambia Development Agency Act and The Competition and Fair Trading Act all share the responsibility of ensuring fair terms of trade in the territory as well as non-discrimination among products.

**The Control of Goods Act**<sup>72</sup> is an Act “to enable the President to provide by regulation for the control of the distribution, disposal, purchase and sale, and the wholesale and retail prices of any manufactured or unmanufactured commodity or of any animal or poultry, or of any class of any such commodity, animal or poultry, for the control of imports into and exports from Zambia, and for other purposes incidental and supplementary to the foregoing.”<sup>73</sup>

This Act on paper provides a very attractive opportunity for the president to use it to restrict imports and protect sectors of the economy. Section 3(1) (a) of the Act states that “Whenever it appears to the President necessary or expedient to control the import into or export from Zambia of any goods, he may, by Statutory Instrument, make such regulations as appear to him to be necessary or expedient for such purposes.” The use of this section with regard to restriction of imports appears to be very minimal (if at all used). This section in particular could and should be used by the president to restrict the importation of goods in sectors of the economy where we possess the greatest potential to develop a profitable base for goods capable of being exported. It could be used to create a monopoly of locally produced products

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<sup>72</sup> Chapter 421 Of the Laws of Zambia

<sup>73</sup> Preamble to the Act, Chapter 421 of the Laws of Zambia

in circulation as is the case with sugar and cement. Integration as a result of globalisation should not mean that the economy should be left exposed at all fronts, it is capable of being embraced with an air of wisdom meant to nurture local industry.

**The Competition and Fair trading Act**<sup>74</sup> can be considered to be a local codification of the rules of non-discrimination of the products being imported into the territory. It has the aim of ensuring fair practices in the business setting and also ensuring that it protects the honest businessman trying to earn a living. The thrust of this can be considered to be the national treatment rules contained in article 3 of GATT as well as the unfair competition rules of Article 10bis (3) of the Paris Convention. It is an Act “to encourage competition in the economy by prohibiting anti-competitive trade practices; to regulate monopolies and concentrations of economic power; to protect consumer welfare; to strengthen the efficiency of production and distribution of goods and services; to secure the best possible conditions for the freedom of trade; to expand the base of entrepreneurship.”

In **The Standards Act**<sup>75</sup> the preamble states that it is an Act “to provide for standards of quality control for certain commodities, to continue the Zambia Bureau of Standards and to re-define its powers and functions as well as to establish the Standards Council of Zambia.” The Zambia Bureau of Standards is the inquiry point for WTO inquiries on technical barriers to trade issues and also serves as a national accreditation focal point. It is also responsible for formulation of national standards, certification of metrology, import quality monitoring, training and consultancy. Its duty in short is to ensure that the effects of integration and free

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<sup>74</sup> Chapter 417 of the Laws of Zambia

<sup>75</sup> Chapter 416 of the Laws of Zambia

trade do not place in circulation products that are sub standard and harmful to the public welfare. Public pressure plays an important part in the work of the bureau. For example, it was consumer outcry over the influx of defective goods that flooded Zambia in the wake of economic liberalisation in the 1990s that led to adoption, in 2003, of the import quality monitoring scheme. This requires that imported household appliances, fabrics, toys, chemicals, electrical goods and similar products meet Zambian national standards.<sup>76</sup>

The **Zambia Development Agency Act**<sup>77</sup> makes provision, in part, for the fostering of economic growth and development by promoting trade and investment in Zambia through an efficient, effective and coordinated private sector led economic development strategy as well as the promotion of exports and globalisation. This can be considered to be the most important piece of legislation for the regulation of trade and the advancement of economic integration as it provides for such factors as investment, privatisation and international trade. This act effectively merges five institutions: the Zambia Privatization Agency, the Zambia Investment Centre, the Export Board of Zambia, the Zambia Export Processing Zones Authority and the Small Enterprises Development Board. The act will enable the government to channel resources more easily to one agency rather than five, thereby reducing bureaucracy. It is structured to ensure efficiency in the delivery of services and accounting, and will help the agency bring an end to the bureaucratic problems that have been frustrating potential investors by regulating the investment industry.<sup>78</sup>

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<sup>76</sup> [http://zabs.zambia.bz/zabs/IQMS\\_Procedures.aspx](http://zabs.zambia.bz/zabs/IQMS_Procedures.aspx) visited on 21<sup>st</sup> January, 2009

<sup>77</sup> Act No 11 of 2006

<sup>78</sup> Transparency International. Global Corruption Report 2008 (Cambridge: Cambridge University Press. 2008) p151

The Zambia Development Agency undertakes what can be referred to as advertising of national products and the Bureau of Standards ensures that only products of acceptable quality can be introduced into the economy and in the event that sub-standard products are introduced that their importation should be stopped immediately. This seems acceptable at first glance but upon analysis in consideration of the role of the multilateral trading system as well as diplomatic relations with other states, is it possible to create such an image against the imported goods without attracting similar treatment in a foreign market? A very basic example of a situation in which the Bureau should act and ensure that the products reaching the market are akin to those already in use is with regard to the plugs of electrical appliances being imported from the Republic of South Africa. The Bureau should demand conformity with the traditionally used rectangular type rather than the round ones being forced on the public but has failed to do so because of the favourable trade relationship in existence<sup>79</sup>

### **4.3 Conclusion**

The peculiarity of the position in which Zambia finds itself as a landlocked developing country that needs the help of its neighbours in order to import and export goods by road, air or rail makes it difficult to enjoy the benefits of integration. To this end, the introduction of transit rules and the improvement in communication and transport efficiency have been very helpful in improving Zambia's share of international trade and investment and ensuring that it reap the benefits thereof. The nation though has the duty to improve the domestic transport and communication infrastructure to further improve the gains from trade.

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<sup>79</sup> Interview: Patrick Sangwani Ng'ambi. 10<sup>th</sup> December, 2008

The progress being made in the 21<sup>st</sup> century by the nation has been very encouraging and government policies are of a progressive nature. This is however being compromised and a commentary made by Alexander Chikwanda<sup>80</sup> where he states that “*the weak foundations and the exceedingly inadequate institutional capacity and thus no resilience to absorb global economic shocks, the going will be a stiff uphill affair,*” stands true in considering the direction which the nation strives to take with regard to global economic integration. The duty to make progress on the international front can only be pioneered by the state.

In order that free trade and globalisation can be appreciated and their benefits enjoyed, not only will the state need to establish channels through which trade can be conducted by establishing favourable diplomatic relations but individuals will also need to rise to the occasion and display creativity that will lead to the availability of competitive products capable of export. The state should secure markets to be taken advantage of by the creativity of its citizens. To this end the development of entrepreneurial skills and the creation of business minded practices among the general population can aid in the creation of viable industry when combined with ideas and efficient and cost effective technology made available by global integration. The protection of certain industries by the state should also be considered in order to allow this developed entrepreneurial skill to be nurtured without the fear of already established competition from other jurisdictions.

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<sup>80</sup> The Post, 12<sup>th</sup> January 2009

## **CHAPTER FIVE**

### **CONCLUSIONS AND RECOMMENDATIONS**

The importance of every research paper lies in the conclusions that can be drawn from the discussions contained in it and how these conclusions can be used to make recommendations that should be considered in order that the status quo may change. In like manner, the focus of this chapter is to highlight the general conclusions that have been reached by the discussions of this paper on globalisation and free trade and further to make recommendations based on the said conclusions and other related factors.

#### **5.1 GENERAL CONCLUSIONS**

From the foregoing it can be concluded first and foremost that developing countries have recognised the benefits that are available and attainable from global economic integration pioneered by globalisation and free trade. Despite this realisation, they have continued to struggle to benefit from continued global integration and free trade. The benefits of integration have eluded developing countries because of the continued marginalisation by developed countries and their prevention of developing countries' chances of diversification and use of technology to promote the development of industries. The main challenge that developing countries have is to enter the mainstream of globalisation and to ensure that all barriers to trade in products of particular interest to them are removed by the developed countries and failure to do this will continue the status quo on which Kofi Annan states that *"It is not realistic to think that some people can go on deriving great benefits from*

*globalization while billions of their fellow human beings are left in abject poverty or even thrown into it.*"<sup>81</sup>

Secondly, the work of the GATT/WTO system is very important for the promotion of the interests of developing countries although it appears to be failing them. This is made clear by the collapse of the Doha Development Round of negotiations, which started in November 2001 and are still ongoing, where negotiations have stalled due to the reluctance of developed nations to grant developing countries the concessions sought in agriculture and industrial tariffs.<sup>82</sup> Whereas positive strides have been made in the lowering of general barriers to trade by the guarantee of concessions, a number of products particularly in the agricultural and textile sectors still require favourable consideration to ensure that developing countries reap greater benefit from the multilateral trading system. It can also be concluded that the one size fits all conditionalities of the IMF and the World Bank work to the detriment of developing countries and that the process of developing these conditionalities therefore requires revision and more input from developing country specialists. These specialists will be able to draw up tailor made conditions for developing countries that seek to borrow money. With due regard to the Bretton Woods Institutions, their trade policies should be contingent on the specific needs of each country depending on its level of development and literacy among the population.

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<sup>81</sup> Kofi Annan's final speech, presented 11<sup>th</sup> December, 2006 (available at <http://news.bbc.co.uk/2/hi/americas/6170089.stm>) visited on 18<sup>th</sup> June, 2008

<sup>82</sup> [http://en.wikipedia.org/wiki/Doha\\_Round](http://en.wikipedia.org/wiki/Doha_Round) visited on 31<sup>st</sup> January, 2009

Thirdly, it can be concluded that the direct impact of continued integration on the Zambian economy and the public as seen through the available statistics suggests significant strides in improving the welfare of the people through integration. The main benefits received thus far are the availability of better products due to greater openness of their markets and the opportunity to benefit from transit rules and better transport and communication. Zambia has received a significant benefit from transit rules due to its landlocked nature. Other than this, the benefits arising from international trade are not being harnessed by the nation after the change to neo-liberal policies in a way that could lead to sustainable economic development. The nation has not done enough to lower bank interest rates so as to stimulate borrowing that will aid in the growth of industry and thus trade in products originating from this jurisdiction. As things stand, the nation continually experiences trade deficits and the balance of payment problems clearly suggest that more should be done to establish viable export products.

It is further concluded that the state will need to act by developing favourable trade relations with other states and encourage the people of Zambia to take advantage of the favourable relations established. The role of the state is to continue its work as negotiator and catalyst for obtaining agreements and concessions from other nations that will ensure that products from this jurisdiction are given favourable treatment as guaranteed by the GATT rules. It is worth noting that this can only be done from the background of an already established manufacturing industry that has received accreditation and it is up to the citizens to create viable, high quality products worthy of export.

## **5.2 Recommendations**

In order that the benefits of continued global integration and free trade can finally be enjoyed by Zambia it is important that certain changes are implemented. To be discussed now are the measures that can be put in place to ensure that benefits are fully enjoyed and these will be discussed under the heads of policy, legal and institutional recommendations respectively.

### **5.2.1 Policy Recommendations**

#### **5.2.1.1 Political will and policy formulation**

It is recommended that Zambia, along with other developing countries, should engage domestic experts in the field of international trade law to not only negotiate the contracts and international instruments governing trade but also to head the relevant government departments tasked with the duty to ensure that the best interests of the republic are secured each time that they are called upon to make representations. As long as the people in political authority have little or no understanding in international trade law matters, the efforts of those in the lower echelons of government in securing the best possible trade packages for the nation will continually be frustrated by the political heads above them as they possess the final say in all matters under their respective departments. It is therefore necessary that they, first and foremost appreciate the delicacy of matters involved before they are presented with proposals for their consideration and approval. In the same way that the Minister of Justice is endowed with legal knowledge, the Ministers of Commerce, Trade and Industry should be headed by a person endowed with a business background and should have a proven track record of business leadership and effective decision making. Similarly, the office of the Attorney General should have legal practitioners conversant with international trade law that

will be able to effectively advise not only the Commerce Minister but also his counterpart in the Ministry of Foreign Affairs. There has always been the feeling that political appointments are based more on affiliation and loyalty than they are on merit. Had appointments been on merit, it would not be difficult for the head of state to pick any member of parliament whether or not he is from the ruling party provided he has the requisite qualifications.

#### **5.2.1.2 Protection of local industry**

It is also recommended that the government should adopt a strict policy that will ensure the protection of particular forms of industry and productivity from external competition that may lead to its downfall. Openness is very important in order to continue receiving aid and favourable international treatment but it is more important for Zambia to establish a manufacturing base. The government can ensure its expedient establishment by protecting and nurturing particular production lines until they are well established and able to compete with any internationally recognised brand. This may be done within the confines of the GATT rules or outside of them depending on which would produce the quicker and most efficient results in the shortest time frame.

#### **5.2.1.3 Efficiency of state machinery**

It is very important that the nation begins to detach itself from the policies that had been in place during the entire one party participatory democracy stage in the history of Zambia's development. In line with this, it is recommended that the state should start changing the mindsets of those that hold public office and run government with the efficiency of a well established capitalist organisation. Most of the delays in government process can be dealt with by ensuring that civil servants actually do their work as effectively as in any private corporation or organisation. Government policy in this regard needs to stimulate thinking and encourage productivity and efficiency in the work place especially where it involves a

government department or provision of a public service and also ensure that employment is based on merit and qualification rather than tribal or partisan lines.

#### **5.2.1.4 Advocacy and Skills training**

Another area of government policy is with regard to education, training and help in changing jobs. This policy could be accompanied by larger spending in these areas together with more generous and effective help for people forced to change jobs by economic growth and development. The education and training policies should be designed such that they answer the needs of a globalised world rather than remain focussed on only the needs of the isolated Zambian society which as yet shows little change towards more technical and automated production processes.

It is important to train persons that will have global competitiveness as well as be relevant to aiding the advancement of the Zambian society. It should be a key government policy to review the curriculum in every public institution of higher learning on a regular basis so as to ensure that the programs offered remain relevant to a changing society. For instance, in legal training the universities should be alive to the fact that the law graduates being trained are not being restricted to the role of litigants when they are admitted to the bar and the law degree program should therefore strike a balance between teaching the relevant litigation material and such programs as are able to fully equip those that venture into international economic relations by equipping them with basic knowledge on the working of the international trade structure among other things.

In line with opening up new areas of productivity, it should also be policy to expand the export markets available to Zambian products by encouraging citizens to utilise the free trade areas and regional trading blocks that are available. The available export data shows that the main export partners are Switzerland (38.4 per cent), South Africa (21.6 per cent), China (10.3 per cent), United Kingdom (7.6 per cent) and Tanzania (6.4 per cent).<sup>83</sup> Increase in production and manufacture of products with recognisable regional markets will greatly aid in expansion of trade that can bring development as this will also curtail high transport costs.

Intra-industry specialisation in trade gives developing countries another catalogue of opportunities. This is also the case with new trade among developing countries, as opposed to trade with already industrialised nations. Often as nations grow, they move away from labour intensive manufactures to more sophisticated forms of production and it is up to the still underdeveloped nations to take advantage of the gaps left by this shift and to export labour-intensive products to those new markets being created. It is therefore recommended that Zambia should duly recognise and exploit these gaps created by the progress of those nations closest to Zambia.

#### **5.2.1.7 Tax incentives given to non Zambians**

It is recommended that the tax incentives given to foreign investors should not be in the form of tax holidays but should take the form of capital allowances. It is not proper for a government to simply forgo corporate income in order to attract investment. The Zambian government should realise that though the primary objective is to attract Foreign Direct Investment, this should not be done at the expense of government revenue. The lesson learnt from the mining houses is that taxes should be levied at all times and not just when, in the

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<sup>83</sup> [http://www.theodora.com/wfbcurent/zambia/zambia\\_economy.html](http://www.theodora.com/wfbcurent/zambia/zambia_economy.html) visited on 19<sup>th</sup> January, 2009

opinion of the head of state, the profits have become large and a moral argument can be used to justify the sudden introduction of taxes. The investors that are granted these tax holidays have no reason to remain operational in the jurisdiction when these holidays lapse and past experience has shown that these investors withdraw from the economy as soon as the period of no taxes nears an end. In this way the generosity of the state and government in granting these tax holidays ensures that the corporations maximise profits and never pay taxes. If tax holidays are to be granted then they should be accompanied by a minimum investment period which runs beyond the incentivised period.

Capital allowances will ensure that the income foregone is very minimal and that it will be recovered in the near future. Capital Allowances are provided for under Income Tax Legislation and are a mode of government policy that can be used to encourage certain behaviour or lines of investment. Under the current Income Tax Act<sup>84</sup> they are provided for under Section 33 and the fifth schedule to the Act. They are granted for most but not all forms of capital business expenditure. Depending on the method of assessment of the allowance and the percentage allowance, taxes on the product could either be deferred or totally forgone by the government but this is only on capital expenditure and will therefore not affect the taxes on general income of the business.

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<sup>84</sup> Chapter 232 of the Laws of Zambia

## **5.2.2 Legal Recommendations**

### **5.2.2.1 Strengthen legal framework providing for the fight against corruption**

It is recommended that the state through the legislature needs to consider strengthening the Anti-Corruption Commission (ACC) as well as the task force on corruption. Corruption is a very huge hindrance to the state's efforts in collecting revenue from trade, particularly cross border trade due to corrupt customs officers. These officers make the process longer and more demanding as they seek to place the trader in a position where they feel that the only way out is to give them a bribe in exchange for their making the process manageable and 'cheaper' for the trader. Corruption also discourages investment by making the process of acquiring licences inordinately tedious. Strengthening the legal structures of these two institutions will guarantee the removal of corruption in the higher echelons of state machinery as well as the ordinary civil servants and other government workers. In addition to very stiff punishment granted to offenders, the state should adopt a deliberate policy of rotation for ACC officers in government departments and agencies that are responsible for trade and collection of money in order to alleviate the negative effects of familiarity as well as ensure that no corrupt practices occur. A very easy and convenient reporting mechanism should be made available to the public so that filing a report should not take an individual out of his way or in any way be an inconvenience.

### **5.2.2.2 Strengthen the legal framework providing for workers welfare**

It is recommended further that the legal framework regulating the conditions of employment for citizens should be strengthened to ensure that the benefits of outsourcing of labour by multinational corporations are fully realised by the host nations. Workers in developing countries, Zambia inclusive, lack the rights, legal protection and union protection enjoyed by their counterparts in developed countries thus the benefits of FDI are harder for the workers

to enjoy. Lacking in bargaining power, workers do not benefit from the demand for labour caused by the Direct Investment. The reason why multinationals outsource labour and relocate their factories is to cheapen the cost of labour relative to the output and as a nation, the labour laws should ensure that the minimum wages available from this form of investment should be able to cater for the basic needs of the least paid person. In this way the integration and the transfer of the means of production into the hands of individuals and corporations will still ensure that citizens are not taken advantage of.

### **5.2.3 Institutional Recommendations**

#### **5.2.3.1 The Zambia Bureau of Standards**

As the body responsible for import quality monitoring, training and consultancy, it would be prudent to ensure that it operates effectively and efficiently with a mandate that ensures the presence of officers trained under it at all points of entry of products into Zambia. The government must strengthen the Bureau by ensuring that it operate free from interference from any body or person and that the decisions made by it that are in the public interest be made subject to no appeal. In like manner, all products that it considers sub-standard and hazardous to the people of Zambia or the environment should be made to undergo an onerous process in which the importer will prove that they are otherwise. The bureau should be independent and provided with sufficient staff to ensure that all entry points into the country are closely monitored. With the greatest expedience possible, the state should construct rules and regulations to guide, define and confirm the powers and operations of the bureau.

### **5.3 Conclusion**

The reasons why the nation adopted neoliberal policies was so that trade may be the tool used to attain sustainable economic development. In order that this economic development may become a reality the state should use the law as the instrument for implementing the above discussed recommendations as a matter of urgency. It is unjustifiable for the status quo of not benefitting fully from integration to go on and the state should therefore adopt and implement the recommendations discussed above.

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