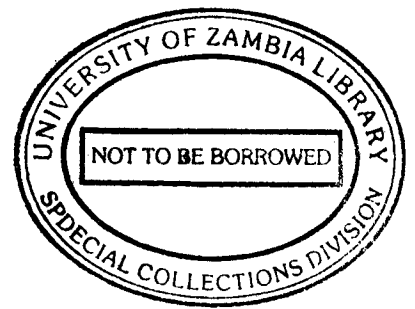


**THE UNIVERSITY OF ZAMBIA
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BY

KAMANGA MATEYO

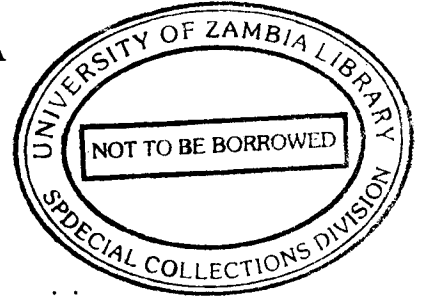
An Obligatory Essay submitted to the University of Zambia, Law Faculty, in Partial fulfillment of the requirements of the Degree of Bachelor of Laws (LLB)

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December, 2005

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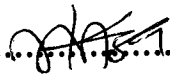
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Mr. Kanja Mpundu

**A CRITICAL ANALYSIS OF THE IMPLEMENTATION OF THE GENERAL
AGREEMENT ON TARIFFS AND TRADE BY ZAMBIA**

BY

**KAMANGA MATEYO
COMPUTER NUMBER 20042051**

**BEING A PAPER SUBMITTED IN PARTIAL FULFILMENT OF THE DEGREE
OF BACHELOR OF LAWS OF THE UNIVERSITY OF ZAMBIA.**

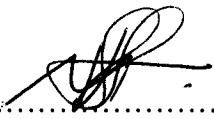
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DECLARATION

I, Kamanga Mateyo, computer No. 20042051 do declare that I am the author of this essay entitled: "A critical Analysis of the Implementation of the General Agreement on Tariffs and Trade by Zambia." I further solemnly declare that this work represent my own ideas and is not a reproduction of any other work produced or submitted by any other person to the University of Zambia or to any other institutions. In this regard, due acknowledgement has been given where other scholarly work has been cited.

Student's Name: KAMANIA MATEYO

Signature: 

Date: 29th DECEMBER, 2005

DEDICATION.

To my Dad (**Leonard Josiah Kamanga**), you have always wanted me to be disciplined and attain University education because you believed I could make it, here I am. To my mum (**Patricia Kamanga**), mama thank you very much for the support and relentless motherly love you have always bestowed to me. To my brothers Josiah, Moses, David (Deceased), Richard, Daniel, Saul, Emmanuel, Muziula, Doko and Leonard. To my lovely niece I shall always consider as my sister, Annie. Annie, do not step into your uncle's footsteps beat him instead. I owe it all to you with love! I thank you very much.

ACKNOWLEDGEMENTS

It really has not been easy to produce this work. My academic life has been very rough. I have reached this far all because of kindness and greatest love from Great God, JEHOVAH. I thank you Great God for teaching me so I could reach this far, your teaching has really benefited me. I value your wise words at **Isaiah 48:17,18** that “:this is what Jehovah has said, your Repurchaser, the Holy one of Israel. I, Jehovah am your God, the one teaching you to benefit (yourself), the one causing you to tread in the way in which you should walk. O if only you would actually pay attention to my commandments. Then your peace would become just like a river, and your righteousness like the waves of the sea.” (New World Translation of the Holy Scriptures).

My special thanks to my Learned supervisor Mr. Kanja Mpundu for his well-balanced guidance in ensuring that I produce this piece of work. I shall always be greatly indebted to him for his kindness, learned advice, objectivity, encouragement and invaluable suggestions and comments that helped me to produce this work.

I wish to pay tribute to my late sister in law Mrs. Margret Kamanga, and her husband, my brother Mr. Josiah Kamanga. I shall always be greatly indebted to Mrs.Margret Kamanga for the generous support she rendered to me before she died. Please, though you are dead there is hope of seeing you again as stated at **John 5:28, 29**: “Do not marvel at this, because the hour is coming in which all those in the memorial tombs will hear his voice (the voice of Jesus) and come out” and at **Acts 24:15** “ I have hope towards God...that there is going to be a resurrection of both the righteous and the unrighteous.”

I thank my brother Mr. Josiah Kamanga for Looking after me. He has not only been a brother to me but a dad and mentor. His kind yet firm training has greatly helped me to attain University Education. I shall always value his training. This is what is stated at **proverbs 22:6** “Train up a boy according to the way for him even when he grows old he will not turn aside from it.”

I thank all the lecturers in the faculty of Law for moulding me into a lawyer. I also thank my brother Muziula Kamanga for assisting me with academic books from primary to secondary school and even at the University. Muzi, thanks for your generosity and maturity, **proverbs 11:25** states “The generous soul will itself be made fat, and the one freely watering (others) will himself also be freely watered.” I would also like to thank Mr. Kapaya Ng ‘andwe, from the Ministry of Commerce Trade and Industry for his enormous support and valuable advice rendered to me to have this work successfully done.

I would also wish to express my profound gratitude to many friends who have been there for me and enabled me to enjoy myself whilst at campus. These great friends of mine are Victor “Luther” Mulenga, Brigadier “Yama” Siachitema, Kenneth Mbewe (in search,) Clifford Moonga, Benaiah “in The” Mupenda, Gamaliel Zimba, Mubanga Kabwe, Chiti Kabwe, Agatha Ntutuma, Abigail Chimuka, Mark Akufuna Liswaniso, Nedy Chilufya and many more I have not mentioned due to limited space. I thank you so very much.

PREFACE

This Obligatory Essay is composed of five chapters. Chapter one discusses the National Control Model and the Market Economy Model which Zambia is using including the importance of the multilateral trading system created by GATT to which Zambia is a member.

Chapter two basically discusses the four main principles of GATT including its historical background. This chapter also analyses how Zambia is implementing these four main principles of GATT.

In Chapter three, this paper discusses the measures that a country engaged in the multilateral trading system created by GATT can use to restrict imports from coming in its country.

In the fourth chapter concentration is on the legal framework that Zambia uses to restrict imports so as to protect its domestic industry and trade. The last chapter will conclude the study and supply necessary recommendations on the subject.

The justification for the study is that it will greatly assist the government on how it can greatly benefit from the GATT. The Essay analyses how Zambia is implementing the GATT and then gives recommendations on how Zambia can even benefit more through implementation. The work is not exhaustive there is still plenty of space for more research.

KAMANGA MATEYO
SCHOOL OF LAW
DECEMBER 2005

INSPIRATIONAL NOTE

“Nature seems to authorize trade, as soon as you see the natural merchant, who appears not so much a private agent, as her factor and Minister of Commerce. His natural probity combines with his insight into the fabric of society, to put him above tricks, and he communicates to all his own faith, that contracts are of no private interpretation. The habit of his mind is a reference to standards of natural equity and public advantage; and he inspires respect...both for the great spirit which attains him and for the intellectual past time which the spectacle of so much ability affords.” (**Ralph Waldo Emerson. Emmerson’s Selected Essays. P.313.**)

That, radical philosopher **Ralph Waldo Emmerson**, is a true inspiration .Emmerson went through the open countryside,with the dust of the fields on his shoulders with his serene and wise smile, to tell that group of Harvard dignitaries,“Trust thyself; every heart vibrates to that iron string.” This has really given me self-confidence for it is the message that gives man his rightful place in the World. In yourself is the law of all nature.

1. INTRODUCTION

It is a recognized and well established truth that multilateral trade created by GATT despite its advantages plays a vital role in the improvement of everyday lives of mankind in that it facilitates the exchange of goods and also generates income and employment thereby improving the economies of countries like Zambia engaged in it. It is cardinal to comprehend that trade becomes much more useful and meaningful if carried out on an international level which undoubtedly is a much larger scale instead of just focusing on domestic trade which tends to limit the flow of business.

It is of paramount importance to note that under the one party state Zambia had a National Control Model Economy in which the government planned and directed economic and social welfare. The government undertook this role on the grounds that they viewed private companies on their own as being incapable of bringing development. The government thus nationalized industries and companies and controlled the prices of goods and services. However, the emergence of Multiparty Democracy in 1991 brought about a new change in the economic life of Zambia which changed from a National control model to a market Economy model in which there was reliance on markets, privatization of companies, deregulation and opening of the economy and became a member of GATT.

The secretariat of the W.T.O. through its technical cooperation Division maintains a comprehensive system of assistance. This comprehensive system has missions to developing country capitals with the express intention of developing human resources in

drafting GATT/WTO related legislation and to provide relevant course so that government officials can be properly trained in these countries. Thus this paper will provide a critical analysis of the implementation of the GATT by Zambia and discuss the legal framework that Zambia uses to restrict imports so as to protect its domestic industry and Trade.

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CHAPTER ONE

1.0 INTRODUCTION

It is a well-proven and undeniable fact that trade plays a pivotal role in the economic prosperity of a developing country like Zambia engulfed in economic doldrums. Thus in order to ensure that Zambia climbs up the ladder of economic prosperity, various attempts have been made by different Zambian governments using different types of economic models. In the first and second Republic, the Zambian Government led by the then President Dr. Kenneth Kaunda adopted a National Control Model type of economy in which there was restriction and regulation of private sector, restriction on foreign influence on the economy and curtailing of import of foreign goods and services through tariffs and tough exchange control while in the third Republic, the Zambian government led by the then President Dr. Frederick Titus Jacob Chiluba adopted a Market Economy model in which there was reliance on the markets, privatization, Deregulation and opening of economies.

1.1 THE NATIONAL CONTROL TYPE OF ECONOMY

Under the National Control type of Economy the Zambian government nationalized companies and industries with the express intention of gaining control of economic development on the grounds that private companies were regarded as not having the necessary expertise to help the country economically develop.

The government thus planned and directed economic and social life by introducing economic reforms in three phases. In the first phase on 19th April, 1968 the government

introduced the Mulungushi Reforms which were meant to expand Zambia's entrepreneurship and increase state participation in the economy. In the second phase the Matero Reforms were introduced which enabled the government to have over 51% shares in the foreign owned mining sector and thirdly were the economic reforms which called for state participation in the Financial sector comprising mainly the banks, insurance companies and building societies.¹

It is thus indeed clear that these economic reforms were designed to enable the government have firm control of industries and trade thereby enabling it as it turned out having monopoly in both the insurance and building society sectors. The government had planning ministries through which it guided and directed various actions that would lead to economic development. The planning ministries were used by the government for carrying out various purposes for instance it was through them that the government determined the economic sectors which were to receive priority treatment and also where investment was to be made and prices to be made for goods and services. Thus the government was the primary economic actor in many sectors of the economy with a lot of control over industries and trade public companies were expanded, government corporations were created and public companies were entrusted with the laborious task of carrying out all kinds of economic activities from insurance to transportation to retail services.

¹ Zambia Towards Complete Independence, An address by President Kaunda to UNIP National Council, 11th August, 1969.

The UNIP government thus became fully entrenched in the Zambian economy and all control lay in its hands. The National Economy control model adopted by the UNIP Government, consisted of the following features.

1.1.1 RESTRICTION AND REGULATION OF PRIVATE SECTOR

The state planned and directed economic development and there was a lot of reliance on the public sector and this ultimately resulted in the increased massive regulation and restriction of the private sector. The private sector did not have a big role in the economic development of the country as it was subjected to strict regulations on very core and fundamental matters such as investment, prices of goods, current exchange, trading operations, business formations, technology transfers, wages and salaries of workers. It is cardinal to comprehend however that the private sector could undertake few activities without first obtaining permission from a planning ministry. The government really controlled the commanding heights of the economy by restricting the private sector but with heavy reliance on the public enterprises, which were believed as having the capacity to generate surpluses, which the government would invest in areas of priority, and eventually lead to rapid development of the economy.

1.1.2 RESTRICTION ON FOREIGN INFLUENCE ON THE ECONOMY

The government had a lot of control over industries and trade thereby restricting the involvement of foreign influence due to various reasons, which were inter-alia to avoid imperialism, to encourage development plans and fear of local empowerment. The government undertook these measures on the grounds that when it gained political

independence on 24th October 1964, it was thought prudent to also demand economic independence by ensuring that powerful western countries were not allowed to rule indirectly shamelessly veiled under the pretext of trade. The government argued that once powerful countries were allowed to exert influence on the economy through trade, there would not be economic independence, which is critical if political independence is to be meaningful. Thus, the governments of many developing countries adopted policies of self-reliance that had arisen like Ujamaa, Harambe and Humanism, which was Zambia's philosophy. There was indeed a lot of restriction on foreign influence on the economy.

1.1.3 CARTERLING OF THE IMPORT OF FOREIGN GOODS AND SERVICES THROUGH TARIFFS AND TOUGH EXCHANGE CONTROL

The government imposed very high tariffs on foreign goods and services to the effect that they were discouraged from coming into the country. There were also very tough exchange controls, which discouraged foreign countries from exporting their goods and services to Zambia. It is an inescapable fact that the reason behind this was to restrict foreign influence and also to control economic interaction with the outside world.

1.2 FACTORS THAT LED TO THE ABANDONMENT OF THE NATIONAL CONTROL MODEL

The UNIP government reliance on the public enterprises and control of trade led to the collapse of the economy. It was indeed tangibly evident that most public enterprises were liabilities rather than assets and most of them operated at disappointingly low levels of efficiency. This situation was precipitated by the lack of finance to subsidize the

operation of these public enterprises, which eventually lowered Zambia's economic development. The poor performance of the public enterprises was also caused by the acute inefficiency that characterized most of these parastatals.²

Although the government struck a few successes, it remains an inescapable fact that the failures were more pronounced and thus the government decided to abandon the National control type of economic model.

Another factor was due to the powerful external forces which demanded fundamental changes in the third world economies often as the condition for financial and development assistance. These powerful external forces were the World Bank and the IMF that demanded the government to privatize companies. The World Bank and IMF together with international commercial banks called for a new series called the Washington consensus that consisted of ten reforms as shown below:

- Fiscal discipline in which the government was told not to spend the money they do not have (cash budget)
- Reduction of public expenditure on politically powerful groups such as the military and instead channel those resources to the basic services like education, health, agriculture and improve the devastated infrastructure.
- Tax reform for example the Zambia Revenue Authority (ZRA)

² J.M. Molekill, parastatal companies and the law in Zambia, 1980

- Competitive Stable Exchange rates in which the government was told to let the market forces determine dollar to Kwacha rate and then stop exchange control. This is why we now in Zambia have Shoprite.
- Financial Liberalization.
- Trade liberalization whereupon the government was told to open up trade to the outside world and discard the domestic trade, which limits the flow of business. The government was told to engage in the multilateral trading system.
- Reduction in barriers to foreign investment so as to stop the policy of not wanting the foreign capital influence the economy but instead adopt the market forces economy under which there is reduction to trade barriers.
- Privatisation of public entities
- Deregulation of trade barriers
- Property Rights Reform in order to prevent the government from owning all the property

The third factor was due to the collapse of communist economies which supported the National control model type of economy and the fourth factor that led to the abandonment of the National Control Model was the successful example of certain Asian States which avoided many of the elements of the National control model especially its restriction on foreign capital and the private entities.³

³ Ibid.

The aforementioned factors which led to the abandonment of the National Control Model created a National need for the change of government and its policies thus in 1991 there were general elections whereupon the UNIP government was ousted from power by the MMD led by the then President Dr. Frederick Titus Jacob Chiluba which adopted a market economy model which is the opposite of the National Control Model and which most countries in the world today including Zambia are pursuing.

1.3 THE MARKET ECONOMY MODEL

The elements of the National economy model are in many ways the exact opposite of those in the Market economy model which consists of elements like reliance on the market forces, privatization, deregulation and open economy where upon the country engaged in the multilateral trading system and joined as a member of the GATT/WTO in 1995.

1.3.1 RELIANCE ON MARKETS

Unlike the National Control forces which relied on state planning and running of trade the Market economy placed emphasis on the market forces which are in charge of making decisions on cardinal aspects of the economy which include investment, determination of the prices of products and services and credit allocation. Thus the market forces play a key role in the economic prosperity of a country. This is the exact opposite of the National control model in which the government is the primary economic actor responsible for development. The market economy's reliance on markets has seen several consequences for example the elimination of planning ministries and

departments, which are typical in the National control model. The market economy model has abolished the National Control model element of having fixed rate of expenditure on the grounds that it retards economic development and instead has adopted floating currency exchange rates thereby creating conducive atmosphere for business resulting in economic stability. The reliance on markets is good because it encourages business of even small-scale farmers and industries in that it allocates credit and loans to such businesses through the forces of supply and demand and credit worthiness unlike under the National Control model in which there is unnecessary governmental and political influence.

1.3.2 PRIVATISATION

It is an inescapable fact that the public enterprises proved disastrous in trying to improve the living standards of the people mainly because of their heavy reliance on the government to provide subsidies, which were lacking. The government thus sold these public enterprises as they proved to be liabilities instead of assets through the process of privatization. Peacock defined privatization as “The transfer of government owned industries to the private sector implying that the predominant share in the ownership of assets transfer lies with private shareholders.”⁴ It is of paramount importance to note that this process of privatization is thought to enhance business acumen in that once the public assets are transferred to the private sector, there is undoubtedly more care and hard work attributed to the property than to the public property. It is also a well-known fact that personal and private enterprises are also more resourceful and ingenious than the public one. It is of paramount importance to note that this process of privatization has

⁴ S. Kiken, Privatisation: The lessons of experience, 1992, p.32

recorded some significant positive results in the Zambian economy in terms of trade for example the Dairy produce Board – DPB now Bonnita (Z) which is taken by the new owners Bonnita Africa holding 66.5% of shares while the dairy farmers who supply milk hold 28.5%⁵. The Agriculture sector also contributes 22% as at the close of 1999⁶ and the tourism sector contributes only 2.2%.⁷ The programme of privatization has thus led to many well renowned international investors to invest in other large projects outside the privatization programme due to the conducive atmosphere that has been created for them. A quintessence of this is Shoprite in the Manda Hill project and Spurs in the Arcades project, which has led to local companies benefiting from the existence of strong foreign players. It is of paramount importance to comprehend that some developing countries like Zambia undertook this process of privatization due to the following reasons.

- Elimination of state planning and direction of economic prosperity
- To reduce government budget deficit
- To improve state own entities by subjecting them to the private sector management and discipline
- To foster the development of a market private sector
- To satisfy demand and conditionalities of international finances such as the World Bank and IMF.

⁵ LUSE Report on Market Sales of Companies

⁶ Report from the Central Statistics Offices - 1999

⁷ Economic Report for 1998

1.3.2.1 BENEFITS OF PRIVATISATION IN ZAMBIA

From the onset, it is noteworthy that since the programme of privatization was enacted as law in Zambia following the passing in parliament of the privatization Act of 1992 there has been some positive tangible achievements for the betterment of the Zambian citizenry wallowing in abject poverty.

ZPA has since the privatization programme managed to transfer over 250 companies and industries to the private sector and privatization has also created thousands of Zambian shareholders in various companies. The programme of Privatisation has proved to be beneficial to the Zambian citizenry on the resolute grounds that the companies privatised are no longer subsidized by the Zambian government and no longer using taxpayers money for their survival.⁸ The money which the Zambian government was using to subsidize these companies is now being used by the government in other cardinal developmental projects like renovating of schools, buying drugs in hospitals and improving the agriculture sector. Zambians are benefiting from the Privatisation Programme more than the foreign players as shown that “out of 257 companies and units sold so far, over 60% have been sold to Zambians and there is continued confidence by the private sector in the efficacy of economic liberalization.”⁹

The Privatisation Programme has greatly assisted in saving of jobs in Zambia as shown by the following list of companies that had been closed down or liquidated leading to job losses before the chance of being saved through privatization. Dunlop Zambia, Indeco

⁸ Privatisation in Zambia: The benefits of privatization in Zambia. Published by the Zambia Privatisation Agency.

⁹ Ibid.

Milling, Lima Bank, Mwaiseni Stores, National Air Charters, Zambia Airways, United Bus Company of Zambia, Livingstone Motor Assemblies. These once great companies would not have closed down resulting in job losses if they had been privatized.

The privatization programme has also benefited Zambians by enabling them own houses through the sale of parastatal residential houses on very low prices. As regards in the agricultural sector “numerous opportunities have been created for farmers through out-grower schemes for the privatized cotton, dairy and sugar sectors.”¹⁰

Many SOEs under the National Control Model were highly unprofitable and thus could not pay taxes but the privatized companies are now making many profits and are managing to pay taxes and hence this has largely widened the tax base, which indeed is good for Zambia.

1.3.4 DEREGULATION

The National control model that Zambia used put many strict regulations that can rightly be argued as being obstacles towards economic activities and trade, in goods and services. These strict regulations greatly hampered trade in goods and services. Thus in order to remedy the situation and promote trade in goods and services, the MMD government led by Dr. F.T.J. Chiluba through the market economy model abandoned almost all the regulations that put restrictions on trade in goods and services for example price control and foreign exchange control including foreign investment. Thus trade in the market economy model was greatly encouraged in that there was free flow of trade in

¹⁰ Ibid

goods and services without the unnecessary strict regulations typical in the National Control Model. It is my considered view in this vein that the removal of unnecessary strict regulations promotes business acumen and enhances economic prosperity.

1.3.5 OPENING OF ECONOMIES

The market economy model has led to developing countries like Zambia to discard the National Control Model policy of self-reliance and close economy but instead has moved in the direction of open economies more especially in the area of trade and investment thereby promoting business environment which eventually leads to climbing up of the ladder of economic prosperity as business is the cornerstone of economic development. Zambia's opening of its economy to the outside world has led to many investors trading with her especially with the further reduction of tariffs on imports thereby expanding the role of foreign trade. Under the market economy model, foreign investment is not viewed as a threat as is the case under the National Control Model but rather as a means for obtaining the capital, technology and links to the World Bank, which are necessary for development. The opening of the economy has led to Zambia trading with many investors who are contributing to sustainable development.

It is cardinal to note in this vein that the opening of economies in the market economy model has enabled Zambia to see the need to engage in the multilateral trading system created by GATT due to significant benefits that the country derives from it. The multilateral trading system created by GATT is important because it enables a country to have comparative advantage. Comparative advantage is where countries prosper by

taking advantage of their assets in order to concentrate on what they can produce best. Sodersten gave currency to this argument to the effect that “in order to speak about comparative advantage ... we compare the opportunity costs of at least two countries. As long as the two countries’ opportunity costs for one good differ, one country has a comparative advantage in the production of one of the two goods, while the other country has a comparative advantage in the production of one of the two goods. As long as this is the case, both countries will gain from trade, regardless of the fact that one of the countries might have an absolute disadvantage in both lines of production.”¹¹ Thus, a country like Zambia endowed with vast natural resources gains a lot from engaging in the multilateral Trading system created by GATT where there is trade with other countries. This is premised on the strong and resolute grounds that the bigger the market the greater their potential in terms of achieving efficient sales of operation and thus having access to large number of customers.

The multilateral trading system created by GATT enables a country like Zambia endowed with vast natural resources to sell some of the surplus to other trading partners and thereby generating income for the country which is used for various purposes which include purchasing drugs in hospitals, building schools and revamp the devastated infrastructure.

The multilateral trading system strengthens relationships between countries involved in trade on the grounds that each and every country needs good relations with other countries if its economy and security is to be guaranteed. This is premised on the

¹¹ Bo Sodersten. International Economics. P.13

reasoning that the other countries do not do things that weakens the economy or security of a country they are trading with because they are aware of the fact that their continued benefit from international trade depends also on their good relationship with other countries they are trading with.

The importance of the multilateral trading system created by GATT thus justifies the membership of Zambia to it and it is cardinal to comprehend in this vein that GATT constitutes of four basic principles aimed at promoting fair trade. A country's ability to derive tangible benefits from GATT depends on her understanding of these basic rules and further implementation of them, which are discussed in the following chapter.

This paper is divided into five parts. This chapter is the first and its aim was to discuss the National control model and the market Economy model which Zambia is still using including the importance of the multilateral trading system created by GATT to which Zambia is a member.

Chapter two basically discusses the four main principles of GATT including its historical background.

In chapter three, this paper discusses the measures that the country engaged in the multilateral trading system created by GATT can use to restrict imports from coming in its country.

In the fourth chapter concentration is on the legal framework that Zambia uses to restrict imports so as to protect its domestic industry and trade.

The last chapter will conclude the study and supply necessary recommendations on the subject.

CHAPTER TWO

FOUR MAIN RULES OF GATT

2.1 HISTORICAL BACKGROUND OF GATT

The World was set ablaze following the devastating effects of the Second World War as nations engaged in diabolic destruction of each other. As General Charles de Gaulle in 1968 said:

Half a century has gone by, yet the mark that the tragedy of the Great World War II left on the body and soul of the nations has not faded... The physical and moral magnitude of this ordeal was such that nothing left was the same as before. Society in its entirety; systems of government, Laws, armed forces, family life interstate relations, fortunes, positions, personal relations – everything was changed from top to bottom. Humanity finally lost its balance never to recover it to this day.¹²

It was therefore thought prudent by nations in the world to begin making amends by creating institutions, which could resuscitate health international relations for the benefit of humanity. The nations thus engaged in important negotiations processes for example the United Nations Conference on trade and employment in 1947 whereupon its end the Havana Charter for the international trade organization was adopted on many grounds for example the failure of the United States to ratify the charter never entered into force. This conference enabled nations to fully express themselves on important developmental issues and provide suggestions on how best to reconcile and thus confidence among

¹² General Charles de Gaulle, Le Monde, November 12, 1968. p.9

nations began to grow to the effect that they decided to further strengthen their relationships by engaging in international trade which would enable them do business with one another. It was then agreed by the nations that international trade would be promoted by substantial tariff reduction and thus pending into force of the ITO charter a mechanism was needed to implement and protect the tariff concession negotiated in 1947. The charter was then taken as commercial policy of the ITO charter and converted into what is known as the General Agreement on Tariffs and Trade (GATT). There was then need to ensure that the GATT was brought into force and thus a protocol of provisional application was developed hence the GATT was born as provisional agreement until such time when the ITO charter would be ratified. It is noteworthy that this provisional application of GATT would apply part one and three of the GATT whilst part two which was dealing with non consistent with existing legislation. Initially there were 23 countries that signed the protocol of provisional application of GATT which entered into force on 1st January 1948 in the light of the entry into force of WTO as of 1st January 1995 and its ratification by almost all GATT contracting parties.¹³

2.2 OBJECTIVE OF GATT

The preamble of the GATT 1994 states its objective as thus:

The Objective of the multilateral system for trade in goods created by GATT is to provide industries and business enterprises from different countries a secure, stable and predictable environment in which they can trade with one another under conditions of fair and equitable competition. This open and liberal trading system is expected to promote through increased trade greater investment, Production and employment and thus

¹³ Dennis Belisle, Consequences of the WTO agreements for Developing Countries, p.65

facilitate the economic development of all countries.

The objective of GATT thus helps to improve the economies of contracting parties through its role of providing industries and business enterprises, which are the bedrock of economic development. The entire edifice of GATT endeavors to achieve its objective through the effective use and implementation of its four main rules. The first rule is protecting domestic industry by tariffs only, the second is that tariffs should be reduced and bound against further increases, third is trade according to the most favored-nation clause and the fourth is known as the national treatment rule.¹⁴ These rules are discussed in detail below.

2.3 FIRST RULE: PROTECTING DOMESTIC INDUSTRY BY TARIFFS ONLY

GATT enables contracting parties to trade with one another freely and fairly, however, it has to be clearly noted that contracting parties are accorded enough room to protect their industries from foreign competition. This entails that contracting parties are urged to protect their industries at reasonable levels through tariffs so as to promote trade. The Zambian government has in the recent past strived to implement this rule as evidenced by the 2005 budget speech delivered by Mr. Ng'andu Magande as follows:

Mr. Speaker, the domestic industry needs the support of the government particularly in sectors where there are threats from cheap import. To promote local manufacturing and preserve employment, I propose to increase customs duty on imported chalk from 15 per cent to 25 per cent. The measure is expected to raise K144 million ...Mr. Speaker, I have also proposed to categorise certain agricultural and other products in the

¹⁴ John Jackson. World Trade Organization and the Law of GATT, p.69

customs tariffs and the process involved upward and downward adjustments in tariffs rates. This measure is mostly meant to discourage importation of some agricultural products already being produced in Zambia and is meant to encourage and stimulate local production. From this measure the government estimates to raise K5.8 billion.¹⁵

This rule of protection of domestic industry by tariffs is reinforced by prohibiting member countries from using quantitative restrictions of imports as stated by Article XI (1)¹⁶ that “No prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas, import or export licenses or other measures shall be instituted or maintained by any contracting party on the importation of any product of the territory of any other contracting party or on the exportation or sale for export of any product destined for the territory of any other contracting party.” This rule is however subject to specified exceptions for example an important exception allows countries that are in balance of payments (BOP) difficulties to restrict imports in order to safeguard their external financial position as stated by Article XII (1) that “any contracting party in order to safeguard its external financial position and its balance of payments, may restrict the quantity of value of merchandise permitted to be imported.” This exception gives greater flexibility to developing countries than developed countries so as to enable them forestall a serious decline in their monetary reserves. This entails therefore that though countries are urged to protect domestic industries by tariffs only they can use quantitative restrictions if in balance of payment difficulties which means that their external earnings from trade in goods and services and the flow of investment and loans are far from

¹⁵ Budget Speech delivered by Finance and National Planning Minister Ng’andu Magande

¹⁶ The General Agreement on Tariffs and Trade (GATT 1947, as amended through 1966)

adequate from their external payment liabilities, and when monetary reserves for meeting immediate liabilities are declining.¹⁷

It is cardinal to note that although countries in balance of payments difficulties are permitted to use quantitative restrictions they are supposed to take certain issues in consideration as stated by article XII (3c)¹⁸ which clearly states that Contracting parties applying restrictions under this Article undertake

- (i) to avoid unnecessary damage to the commercial or economic interests of any other contracting party.
- (ii) not to apply restrictions so as to prevent unreasonably the importation of any description of goods in minimum commercial quantities the exclusion of which would impair regular channels of trade and
- (iii) not to apply restrictions which would prevent the importation of commercial samples or prevent compliance with patent trade mark, copyright or similar procedures.”

This entails therefore that contracting parties are not supposed to selfishly disadvantage each other by using quantitative restrictions shamelessly veiled under the pretext of being in balance-of-payment (BOP) difficulties without even caring as to the damage they will inflict on the commercial or economic interests of another contracting party.

¹⁷ Dennis Belisle, *Business Guide to the World Trading System*, P.56

¹⁸ The General Agreement on Tariffs and Trade (GATT 1947, as amended through 1966)

Thus contracting parties are supposed to use quantitative restrictions within the confines of the rules as promulgated under the GATT which aims to provide a secure, stable and predictable environment under conditions of fair and equitable competition thereby promoting trade, greater investment, production and employment. There has been reinforcement of the discipline against the use of quantitative restriction for example in the agriculture sector member countries have abolished quantitative restrictions and their systems of variable levies but instead have opted in their place for tariffs with new rates which “have been determined by tariffication meaning calculating the incidence of quantitative and other measures on the price of the imported products and adding it to the then prevailing tariffs. After tariffication countries may henceforth protect their domestic agricultural production only by means of tariffs.”¹⁹ This basic GATT rule that protection to domestic production should be given primarily through tariffs has been made more powerful by the WTO legal system which has strengthened the rules against the use of quantitative restrictions.

¹⁹ Ibid at p.57

2.4 SECOND RULE : TARIFFS SHOULD BE REDUCED AND BOUND AGAINST FURTHER INCREASES

The second rule of GATT provides for the reduction and elimination of tariffs and other barriers to trade through multilateral negotiations. This rule clearly states that the tariffs so reduced should be bound against further increases as stated by Article 11: 1(b) of GATT 1994 which states that “the products described in part 1 of the schedule relating to any contracting party which are the products of territories of other contracting parties, shall on their importation into the territory to which the schedule relates and subject to the terms, conditions or qualifications set forth in that schedule, be exempt from ordinary customs duties in excess of those set forth and provided for therein. Such products shall also be exempted from all other duties or charged of any kind imposed on or in connection with importation in excess of those imposed on the date of this agreement or those directly and mandatorily required to be imposed thereafter by legislation in force in the importing territory on that date.” This provision entails that once contracting parties have agreed on the rate of tariffs and other commitments, then such agreement is listed in the schedules of concessions which is given to each member country and then in order to ensure that such agreement is not breached, all member countries are placed under an obligation not to impose tariffs or other duties or charges which are in excess of those set further in its schedule. Contracting member countries are also obliged not to take measures such as the imposition of quantitative restriction which would reduce the rates concessions. The Business Guide to the World Trading System gives currency to this argument to the effect that:

It is also possible for a country to bind its tariffs at a ceiling rate which is higher than the rate resulting from the tariff reductions agreed in the negotiations. Thus a country which has agreed to reduce a tariff from 10% to 5% may indicate that, while it will apply the reduced rate to imports, the bound rate of the tariff will be 8%. In that case the country is free to raise its tariffs to 8% at any time without infringing any of its GATT obligations.²⁰

This entails that a country that has because of negotiations bound its tariffs in the schedule of concessions can actually secure release from the binding and in fact raise the tariff above the bound rate. This can be achieved by that country entering into renegotiations with contracting countries with which it had initially negotiated the concessions and with the municipal supplying countries of the product concerned. It is cardinal to note that such a country which is requesting to raise tariffs higher than agreed in the concessions has in order for other countries to agree got to make compensatory tariff concessions on other products in which the countries with which it is negotiating with have a trade interest.

2.4.1 PRINCIPLE GOVERNING THE EXCHANGE OF CONCESSIONS IN NEGOTIATIONS

GATT basically aims to provide industries of member countries a secure, stable and fair environment and thus when it comes to the exchange of concessions in negotiations it in order to promote fair trade has a basic principle of reciprocity and mutual advantage. This principle entails that, if a developing country like Zambia wants to have improved

²⁰ The Business Guide to the World Trading System, p.58

access to the market of other countries by means of reducing tariffs or removal of other barriers for example quantitative restrictions then she will be expected to make concessions in tariffs and other areas considered advantageous and indeed of reciprocal or equivalent value to the concessions they are making. This principle of reciprocity does not apply to negotiations entered into between developed and developing countries as stated under Article XXXVI: 8 of GATT that “The developed contracting parties do not expect reciprocity for commitments made by them in trade negotiations to reduce or remove tariffs and other barriers to the barriers to the trade of less – developed contracting parties.” This principle of relative reciprocity is premised on the strong and resolute grounds that not all member countries are at the same level of development because some countries have higher levels of development than others and as such cannot reasonably be expected to compete on the same footing. Thus countries make different contributions as stated that “ The developing countries that have reached higher stages of development are required to make contributions and concessions in the form of tariff reductions and bindings than those at lower rings of economic growth. This concept is also known as ‘graduation’ since it visualizes that as a developing country develops, it will graduate to a higher status and ultimately may be able to make tariff concessions and accept disciplines in other areas on the same basis as developed countries.”²¹ Developing countries like Zambia are as a result of such GATT rules now following policies promoting export growth and reducing tariffs and eliminating the plethora of licensing and other systems they had maintained to restrict imports.

²¹ The Business Guide to the World Trading System, p.59

2.5 THIRD RULE: TRADE ACCORDING TO THE MOST-FAVOURIED NATIONS CLAUSE

This basic rule of GATT provides that trade must not be discriminatory and is embodied in the famous most favoured nation clause under Article 1. This principle aims at ensuring that there is fair trade without any discrimination among member countries thus for example if one country enters into trade agreement with another country so as to reduce custom duties on imports of tea from 20% to 14%, then this reduced rate must in order to promote fair trade be extended to all member countries. A quintessence of this is the implementation of this rule by Zambia when the Minister of Finance and National planning addressed the nation on his 2005 budget presentation as follows:

Mr. Speaker, the cellular mobile telephone network is a modern innovation in telecommunication undergoing expansion. To enable more people have access to the network and hence spur further growth in this area, I propose to reduce customs duty on cellular mobile telephone handsets from 15 per Cent to 5 per cent. The expected revenue loss is an estimated K320 million. I propose to reduce customs duty on children's books from 15 per cent to 0 per cent. In order to further enhance the growth and support to the music industry ,I propose to reduce customs duty on pancakes used in music production from 15 per cent to 5 per cent. The estimated revenue loss is K84 million. Sir, the current policy of government is to, as much as possible move away from taxing capital goods to make investment less costly..... I propose to reduce customs duty on forklifts from 15 percent to 5 per cent. The measure will result into an estimated million.²²

²² Budget speech delivered by finance and National Planning Minister Ngandu Magande

These reductions of customs duties by the Zambian government are extended to all member countries without discrimination so as to promote fair trade. Thus this shows that the Zambian government is striving hard to this extent to implement this rule of GATT.

This obligation of extending such MFN treatment does not only apply to imports but also to exports, for example if country A levies duties on exports of a product to one destination, it must also apply it at the same rate to exports to all destinations for example the Zambian Government as was stated by the Minister of Finance and National Planning levied duties on unprocessed timber as follows:

Sir I propose to introduce export duty at the rate of 25 per cent on unprocessed timber and scrap metals exported. This measure is intended to encourage the export of value added timber products and has the added benefits of creating employment. The export duty on scrap metal is meant to stimulate local recycling of waste metal and to encourage the growth of the local foundry industry.²³

This is extended to exports to all destinations. Article 1:1²⁴ lucidly explains that the obligations to provide MFN treatment is not just confined to tariffs but also applies to:

- Charges of any kind imposed in connection with importation and exportation
- The method of levying tariffs and such charges
- Rules and formalities in connection with importation and exportation

²³ Ibid

²⁴ The General Agreement on Tariffs and Trade/GATT 1947, as amended through

- Internal taxes and charges on imported goods and laws, regulations and requirements affecting their sales
- The administration of quantitative restrictions for example by allocating quotas among supplying countries on a non-discriminatory basis where such restrictions are permitted under the exceptions provisions.

This basic rule of GATT ensures that there is no favouritism among member countries in the area of foreign trade but instead what should actually prevail is fair trade which eventually enables member countries to climb the ladder of economic prosperity for the betterment of its citizenry. There are however exceptions to this MFN rule of GATT stated below.

2.5.1 EXCEPTIONS TO THE MFN RULE

The exception to the MFN rule under the GATT rules recognize that tariffs and other barriers to trade can be reduced on a preferential basis by countries under regional arrangements. This entails that countries under regional arrangements can reduce tariffs and other barriers and are not expected to extend such treatment to other member countries outside the region as is required by the MFN rule. There are two strict conditions laid down by GATT so as to protect trade interest of non- member countries. The first condition states that member countries or regional arrangements must remove tariffs and other barriers to trade affecting substantially all trade among themselves, and the second condition is that the arrangement should not result in the imposition of new barriers to trade with other countries.²⁵ Regional arrangements may take the form of

²⁵ The Business Guide to the World Trading System, p.60

customs unions or free-trade areas. Article XXIV: 8 (a)²⁶ states that: “A customs union shall be understood to mean the substitution of a single customs territory for two or more customs territories, so that duties and other restrictive regulations of commerce... are eliminated with respect to substantially all trade between the constituent territories of the union or at least with respect to substantially all the trade in products in such territories,” while regarding a free trade area Article XXIV 8(b) states that “A free trade area shall be understood to mean a group of two or more customs territories in which the duties and other restrictive regulations of commerce (except where necessary those permitted under Articles xi, xii, xiii, xiv, xv and xx) are eliminated on substantially all the trade between the constituent territories in products originating in such territories.” A critical analysis of these provisions clearly shows that in both cases trade among members states is carried out on a duty-free basis while trade with other countries continues to be subject to the MFN tariff rates. Currently there are over 100 regional preferential arrangement in force for example in Africa there is the SADC, in west Africa the new Economic and Monetary Union (WAEMU), and COMESA with over 20 member states which remains the largest regional entity in Africa, while in Europe there is the EU, in America there is the North American Free Trade Agreement (NAFTA) and in Asia there is the Association of South East Asian Nations (ASEAN). It is cardinal to note that such preferential arrangements are advantageous in that they enable industries under such regions to market their products in other countries in the region.

However, such arrangements may disadvantage industries in countries outside the region as they have to pay customs duties on an MFN basis. There is a challenge on how to

²⁶ The General Agreement on Tariffs and Trade (GATT 1947, as amended through 1966).

ensure that there is complementarity between efforts to develop regional trade and attempts to further liberalize trade at the multilateral level. Developed countries have thus introduced non-reciprocal one way free trade arrangements under which the imports that are coming from either all or a limited number of developing countries enter their markets duty free.²⁷ The examples of such one-way preferential arrangements are:

- The Generalised system of preferences (GSP) whereby developed countries allow imports from developing countries of all Industrial products and of selected agricultural products on a preferential and duty free basis.

A practical example of the GSP is the African growth opportunity Act (AGOA) which provides reforming African countries with the most liberal access to the U.S. Market available to any country with which the USA does not have a Free Trade Agreement.²⁸ This benefits countries like Zambia, which are eligible to trade with America under AGOA by virtue of them, being designated least developed country meaning a sub-Saharan country that had a per capita gross national product of less than \$1,500 a year in 1998 as measured by the world bank. Zambia derives a lot of benefits from AGOA due to the abundant eligible products it has for example agricultural products such as baby corn, fine beans, baby courgette (Zucchini), chillies, okra and sugar snaps which are exported to the USA. These products are however subject to the Pest Risk Analysis. Some Zambian companies like Unily garments, Tonje garments, Zambia-China Mulungushi Textile have been identified by COMESA to be ready to take on the AGOA market. “So far SWARP spinning mills is the current germ of textile and apparent sector. Since the advent of AGOA it has posted phenoriet export of cotton yarn to regional

²⁷ The Business Guide to the World Trading System, p.62

²⁸ HYPERLINK “<http://www.agoa.gov>” .www.agoa.gov , background about AGOA P.1

buyers. This is an indirect AGOA benefit but it is something worth recording because garments factories in Mauritius and South Africa to make garments which are exported to the USA use yarn from SWARP spinning mills.”²⁹

- The LOME convention where member states of the European Union allow imports from a number of developing and least developed countries in Africa, the Caribbean, Asia and the Pacific (ACP countries) to enter on a duty free basis.
- The Caribbean Basin Initiative under which the U.S.A allows imports from Caribbean countries on a duty free basis.

2.6 FOURTH RULE: NATIONAL TREATMENT

Article 111³⁰ states the National treatment rule as follows “The contracting parties recognize that internal taxes and other internal charges and laws, regulations and requirements affecting the internal sale, offering for sale, purchase, transportation distribution or use of products, and internal quantitative regulations requiring the mixture, processing or use of products, and internal quantitative regulations requiring the mixture processing or use of products in specified amounts or proportions, should not be applied to imported or domestic products so as to afford protection to domestic production.” Then Sub-Article (2) also clearly state that “The products of the territory of any contracting party imported into the territory of any other contracting party shall not be subject, directly or indirectly to internal taxes or other internal charges of any kind in excess of those applied, directly or indirectly to like domestic products.” This rule quite clearly complements the MFN and it in essence entails that once imported products have

²⁹ Moses Simemba. Zambia – US Trade, AGOA Trade p.1

³⁰ The General Agreement on Tariffs and Trade (GATT 1947, as amended through 1966)

crossed the border then they are not supposed to be subjected to any treatment which is less favourable than to the like products produced domestically. Thus any restriction or taxes applied on a foreign product should equally be applied to domestic products. In such a way a level playing field is therefore introduced by the prohibition of measures, which seek to protect local products at the expense of fair competition.

The Business Guide to the World Trading System gives currency to this argument to the effect that “Thus it is not open to a country to levy on an imported product after it has entered the country on payment of customs duties at the border, internal taxes (such as sales tax) at rates that are higher than those applied to comparable domestic products. Likewise, regulations affecting the sale and purchase of products in the domestic market cannot be applied more rigorously to imported products.” The National treatment rule applies not only to internal taxes but also to the rules governing mandatory standards for products and those applicable to the sale and distribution of goods. This rule is against discrimination of imported goods and the Zambian government has made some progress in ensuring that both imported and domestic goods are treated equally as reflected in the 2005 budget presentation by the Minister of Finance and National Planning as follows:

Sir in line with the health policy of the Government to keep the cost of drugs and other medical products low, I propose to remove medical supplies from the exempt schedule to the Zero-rate schedule. This measure will boost local manufacturing of medical products while at the same time leveling the playing field with the imported medical products that are tax-free.

It is of paramount importance to elucidate that countries by becoming members to the GATTs thereby undertake to observe and implement all the aforementioned main obligations which are also called the framework obligations of GATTs.

The 'bargaining power' over implementing agreements is not equal among member states and thus the GATT has in order to protect the interests of developing countries and particularly LDCs like Zambia provided that implementation shall be according to the terms and conditions of each agreement entered into by a particular country for example there is larger transition periods for developing and least developed countries thereby making the 'bargaining power' unnecessary. This thus entails that implementation is a commitment directly linked to membership.³¹

³¹ International Trade Rules: An Answer Book on the WTO Agreements for Small and Medium Sized Exporters, p.24

CHAPTER THREE

MEASURES A COUNTRY CAN USE TO RESTRICT IMPORTS FROM COMING IN ITS COUNTRY

3.1 INTRODUCTION

The engagement by countries in the multilateral trading system created by GATT enables them to open up their industries to other member countries so as to facilitate good business. The GATT recognizes that even though countries decide to engage into the multilateral trading system, they still have to protect their domestic industries from foreign competition. Hence in order to enable contracting countries have the needed protection for their domestic industries, GATT has laid down reasonable measures that any member can undertake so as to protect domestic industries. It is cardinal to comprehend that member countries are encouraged to apply measures within the confines of the law as promulgated by 'THE GENERAL AGREEMENT ON TARIFFS AND TRADE' which are for the intended purpose of reasonable protection of domestic industries and not use these measures in unfair trade politics which are shamelessly veiled under the pretext of protection of domestic industries. There is really need to protect domestic industries which are the panaceas of economic malaise as evidenced by their contribution to economic development once accorded such protection. It is thus imperative that a member country like Zambia engulfed in abject poverty strives to protect these panaceas of economic malaise so as to climb the valiant ladder of economic prosperity. The GATT has in this respect enacted the following measures to be use by all member countries.

3.2 QUANTITATIVE RESTRICTIONS OR THE QUOTA SYSTEM

The quantitative restrictions is the most prominent non-tariff barrier through which countries can restrict imports. Member countries using the quantitative restrictions to protect their domestic industries clearly specify the quantity of a particular product that they will allow to be imported into the country during a specified period for example a country like Zambia can lucidly specify that she will import only 150 tonnes of coffee from March to June. The Quota system may be in three categories: Global, Regional or country specific. Under the global system Zambia for example can state that she will import 180 tonnes of coffee from anywhere in the world. In the Regional, Zambia can state the region she will be importing 180 tonnes of coffee from, for a specific period of time while in the country specific you specify the country you will be importing from say 180 tonnes of coffee from Ghana. The quantitative restrictions is very effective and this explains why a lot of member countries use it.

Article X 1(1)³² is instructive on the use of quantitative restrictions as it provides that “No prohibitions or Restrictions other than duties, taxes or other charges whether made effective through quotas, import or export licences or other measures, shall be instituted or maintained by any contracting party on the importation of any product of the territory of any other contracting party or on the exportation or sale for export of any product destined for the territory of any other contracting party.” This provision entails that contracting parties should not use any prohibitions or restrictions apart from duties, taxes or other changes even though such restrictions are made effective through the quotas or quantitative restrictions. There are however exceptions to this provision contained in

³² The General Agreement on Tariffs and Trade (GATT 1947, as amended through 1966).

sub- Article (2) which allow a contracting party to use the quantitative restrictions so as to restrict imports for the purpose of protecting domestic industries. Sub-Article (2)³³ provided that sub-Article 1 of Article XI should not extend to the following.

- “(a) Export prohibition or restrictions temporarily applied to prevent or receive critical shortages of food stuffs or other products essential to the exporting contracting party;
- (b) Import and export prohibitions or restrictions necessary to the application of Standards or regulations for the classification, grading or marketing of commodities in international trade;
- (c) Import restrictions on any agricultural or fisheries product, imported in any form, necessary to the enforcement of government measures which operate:
 - (i) to restrict the quantities of the like domestic product permitted to be marketed or produced, or if there is no substantial domestic production of the like product, of a domestic product for which the imported product can be directly substituted or
 - (ii) to remove a temporary surplus of the like domestic product, or if there is no substantial domestic production of the like product, if a domestic product for which the imported product can be directly substituted, by making the surplus available to certain groups of domestic consumers free of charge or at prices below the current market level: or
 - (ii) to restrict the quantities permitted to be produced of any animal product the production of which is directly dependent, wholly or

³³ Article xi (2) of the General Agreement on Tariffs and Trade (GATT 1947, as amended through 1966).

mainly, on the imported commodity, if the domestic production of that commodity is relatively negligible.”

Thus clearly this provision allows contracting parties to use quantitative restrictions under the aforementioned exceptions. It is cardinal to comprehend that a contracting party cannot just use quantitative restrictions merely on the grounds that, ‘it feels or assesses’ that it meets the requirements set forth under Article XI of GATT. It ,despite meeting the conditions set forth under GATT ,has to apply to use quantitative restrictions on importation of any product. The conditions to use quantitative restrictions is contained under Article XI(2)³⁴ (c) which provides that any contracting party applying restrictions “shall give public notice of the total quantity or value of the product permitted to be imported during a specified future period and of any change in such quantity or value ”and also further provides that “any restrictions applied under Article X 1 (1) shall not be such as will reduce the total of imports relative to the total of domestic production, as compared with the proportion which might reasonably be expected to rule between the two in the absence of restrictions.” The proportion should be determined by the contracting party paying due regard to the proportion prevailing at a previous representative period and also might include any special factors which might have affected the trade in the product concerned.

3.3 BALANCE OF PAYMENTS

Article x 11(1) provides that if a contracting party is in balance of payments difficulties it may restrict imports in order to protect its financial position. The Business Guide to the

³⁴ Ibid

World Trading System³⁵ in relation the meaning of countries, which are in balance of payments difficulties, states as thus.

Countries are considered to be in balance of payments difficulties when their external earnings from trade in goods and services and the flow of investment and loans are far from adequate for their external payment liabilities, and when monetary reserves for meeting immediate liabilities are declining. GATT rules provide developing countries in balance-of-payments difficulties a greater flexibility to se quantitative restrictions in imports.

A contracting party which is in balance of payments difficulties must abide by the conditions provided for under subArticle (2)³⁶ which states that “(a) import restrictions instituted, maintained or intensified by a contracting party under this Article shall not exceed those necessary.

- (i) to forestall the imminent threat of or to stop a serious decline in its monetary reserves or
- (ii) In the case of a contracting party with very low monetary reserves, to achieve a reasonable rate of increase in its reserves.” In both these two cases ,a contracting party shall pay due regard to any special factors which may be affecting the reserves of such a contracting party.

Sub-Article (b) further provides that contracting parties applying restrictions under sub-paragraph (a) of this paragraph “shall progressively relax them as such conditions

³⁵ The Business Guide to the World Trading System, p.56

³⁶ Article XII of the General Agreement on Tariffs and Trade (GATT 1947, as amended through 1966.

improve, maintaining them only to the extent that the conditions specified in that subparagraph still justify their application. They shall eliminate the restrictions when conditions would no longer justify their institution or maintenance under that subparagraph.” These conditions are aimed at preventing contracting parties from selfishly taking advantage of their balance of payments difficulties to exploit industries of other contracting parties. Thus all contracting member countries with balance of payments difficulties should operate within these provisions so as to promote and enhance economic development.

3.4 TARIFFS

The tariff is the most prominent method of restricting imports from coming into the country so as to protect its domestic industries. A tariff is a tax that is imposed at the border on imported goods and products. There are three types of tariffs vis-à-vis.

- Advalorem: This is a tax set as a per centage of the imported goods or products, for example if a product coming from neighbouring countries like Tanzania is valued at K10,000.00 and then it is taxed 10% at the Zambian border what this entails is that K1,000.00 will be due upon importation of that product.
- Specific: This is simply a flat charge per unit or quantity of goods for example Tanzania may be exporting 200 tonnes of goods to Zambia which can charge like K20,000.00 per tone or unit.
- Mixed: This is a combination of both the Advalorem and specific for example where you charge K10,000.00 per tonne or unit plus 10% per tone or unit.

There are negotiations involved in applying the tariff system as provided for under Article XXVIII 2(a)³⁷ which states that “Negotiations under this Article may be carried out on a selective product-by-product basis or by the application of such multilateral procedures as may be accepted by the contracting parties concerned. Such negotiations may be directed towards the reduction of duties, the binding of duties at then existing levels or undertakings that individual duties or the average duties on specified categories of products shall not exceed specified levels. The binding against increase of law duties or of duty free treatment shall, in principle be recognised as concession equipment in value to the reduction of high duties.” These tariff negotiations are conducted fairly according adequate opportunity to each individual contracting party and individual industries including the needs of developing countries for a more flexible use of tariff protection so as to enable them economically develop.

3.5 SUBSIDY

A subsidy is one of the most effective measures that a country can use to restrict imports. It can be used as a protective measure if it is given for the domestic production of goods so that such goods can cost lower in the domestic market than comparable imported products or goods. A good example of how a country uses subsidies is where a domestic company sells its products at the price of say K12,000.00 while comparable imported products or goods cost K11,500.00, in such a situation, the government in order to protect its domestic industry may provide a subsidy of K2000.00 to products with the express intention of lowering the price compared to the imported products which therefore entails that the price of the domestic products will go down to K10,000.00 while that of the

³⁷ Ibid

comparable products or goods will remain at K11,500.00. In such a way the government would be restricting the amount of imports in that the exporting contracting party cannot continue exporting in large quantities where the like products in the country cost lower than their products. However, when providing subsidies a contracting party is supposed to take into account the following considerations stated under Article XVI (ii)³⁸ which provides that “if any contracting party grants or maintains any subsidy, including any form of income or price support, which operates directly or indirectly to increase exports of any product from, or to reduce imports of any product into, its territory, it shall notify the contracting parties in writing of the extent and nature of the subsidization of the estimated effect of the subsidization on the quantity of the affected product or products imported into or exported from its territory and of the circumstances making the subsidization necessary.” In the event that the granting of subsidy by one country causes injury to another contracting party, sub-Aarticle 1³⁹ further provides that “...in any case in which it is determined that serious prejudice to the interests of any other contracting party is caused or threatened by any such subsidization the contracting party granting the subsidy shall upon request, discuss with the other contracting party or parties concerned, or with the contracting parties, the possibility of limiting the subsidization.” It has to be understood that under such discussions, the other contracting parties are supposed to reach an agreement or concession with the country granting subsidies before it does that. Sub-Article 3⁴⁰ further states that:

³⁸ Ibid

³⁹ Ibid

⁴⁰ Ibid

Accordingly, contracting parties should seek to avoid the use of subsidies on the export of primary products. If, however, a contracting party grants directly or indirectly any form of subsidy which operates to increase the export of any primary product from its territory, such subsidy shall not be applied in a manner which result in that contracting party having more than an equitable share of world export trade in that product, account being taken of the contracting parties in such trade in the product during a previous representative period, and any special factors which may have affected such trade in the product.

This provision lets contracting parties not to abuse the use of subsidy as a protective measure of protecting domestic industries from foreign competition.

3.6 STATE TRADING ENTERPRISES

The government can use state trading enterprises to restrict imports in that it can direct that a particular state trading enterprise be the only entity allowed to import a certain type of product or good. The state trading enterprise will then import such goods and then resale them on the domestic market. The degree of protection that this tool will give depends upon the 'MARK-UP' which the state trading cooperation will impose on the imported goods or products for example if such a state trading cooperation purchases products at the price of K20,000.00 and then resales them in the domestic market at the price of K40,000.00 then clearly it has imposed a 100% 'MARK – UP', this can create similarly to 100 tariffs and hence reduces the demand for imported goods in competition

with domestic goods and products. In such a way the imported goods cost higher than the domestic goods thereby restricting the amount of importation, which ultimately results in the protection of domestic industries. The state trading enterprise can also use its purchases and sales to have the effects of a quota system ,for instance it may since it has the right simply refuse to purchase more than a specified amount of foreign goods for domestic resale thereby restricting the quantity of imports. It is cardinal to comprehend that any contracting party that is using state trading enterprise is supposed to abide by Article XVII(1)(a)⁴¹ which provides that “Each contracting party undertakes that if it establishes or maintains a state enterprise, wherever located, or grants to any enterprise formally or in effect, exclusive or special privilege such enterprise shall in its purchases or sales involving either imports or exports act in a manner consistent with the general principles of non-discriminatory treatment prescribed in this Agreement for governmental measures affecting imports or exports by private traders.” It has to be noted also that in imposing a ‘MARK-UP’ the government has to ensure that the price of the imported goods or products is higher than that of the domestic products or goods. Such a contracting party is supposed to impose a reasonable ‘MARK-UP” without discrimination.

⁴¹ *Ibid*

CHAPTER FOUR

ZAMBIA'S LEGAL FRAMEWORK IN RESTRICTING IMPORTS

4.1 HOW THE GATT ENSURE THAT APPROPRIATE NATIONAL LEGISLATION IS ENACTED AND IMPLEMENTED IN DEVELOPING COUNTRIES

Member countries by virtue of their membership thereby undertake to conform to all the laws under the GATT, which include implementation, as provided for under different GATT/WTO agreements. It has to be comprehensively elucidated that although a country like Zambia is engaged in the multilateral trading system created by GATT, it still has the right of sovereignty to control the movement and also regulate all matters pertaining to the importation of any goods in Zambia and further determine the conditions for any goods imported if need arises .The GATT recognizes this sovereignty of developing countries and thus in order to enable member countries protect their sovereignty and fully benefit from the multilateral trading system, the GATT allows developing countries to enact national laws to control imports for various reasons for example if there is too much of a certain product locally produced then that country will be allowed to restrict the importation of that like product through a national empowering legislation so as to make the restriction legal thereby promoting fairness and enhancing excellent business acumen. It has to be cogently stated in this vein that GATT emphasizes fairness in the multilateral trading system as stressed in its preamble as thus. “The objective of the multilateral system for trade in goods created by GATT is to provide industries and business enterprises from different countries a secure, stable and predictable environment

in which they can trade with one another under conditions of fair and equitable competition". It is thus on the strength of such undoubtedly resolute grounds of promoting conditions of "fairness and equitable competition"⁴² that developing member countries are edged to submit the texts of their national laws and regulations to respective committees under the agreements whereupon other members are accorded an opportunity to verify whether the texts conform with the GATT and where they do not, they are changed as categorically stated in the International trade rules; an answer book on the WTO Agreement for small and medium-sized exporters⁴³ as thus

It was decided that all countries should submit the texts of their national laws and regulations as they relate to areas covered by WTO to respective committees established under the agreements (for example the committees on customs valuation, an impact licensing and on technical barriers to trade). Other members are thereby given the opportunity to scrutinize these texts and in cases where they do not correspond to the legal requirements of GATT/WTO request that amendments or changes to the laws be made, as a last resort, governments can invoke the WTO dispute settlement mechanism against a member if the latter fails to remedy the situation.

In so doing the GATT ensures that member countries enact appropriate national legislation for the purpose of promoting and enhancing international trade and not let countries take advantage of their sovereignty to unfairly have an "upper-hand" over other member countries by enacting discriminatory national laws, which just favour them. Thus

⁴² GATT 1994, Preamble

⁴³ At P. 19

countries when enacting national legislation should aim at protecting their vulnerable industries in order to properly implement the GATT/WTO agreements.

The GATT/WTO assists developing member countries like Zambia in which there is indeed chronic poverty to implement the agreements for example in drafting national legislation so as to improve infrastructure and promote business development as shown below.

The WTO secretariat has, through established a comprehensive system to assist developing country governments in implementing their WTO commitments. This includes the organization of national and regional seminars and workshops, as well as technical missions for specific legal tasks, such as drafting national laws or regulations on areas covered by WTO support for the private sector to further business development has been the task of the international trade centre, an international agency jointly financed by the United Nations (through UNCTAD)⁴⁴.

Thus in line with GATT provisions permitting member countries to enact national laws to restrict imports, Zambia has enacted a legal framework which is in conformity with GATT provisions so as to legally restrict imports under various permitted circumstances. Thus the following is Zambia's legal framework in restricting imports.

⁴⁴ International Trade Rules: An answer book on the W.T.O. Agreements for small and medium-sized exporters, P. 23

4.2 ZAMBIA'S LEGAL FRAMEWORK IN RESTRICTING IMPORTS

Zambia has a comprehensive legal framework in restricting imports as evidenced by the large number of statutes enacted which are in conformity with the provisions of GATT. It is of paramount importance to stress that in order to implement the GATT/WTO agreements, the GATT allows the member countries to use the following measures:

In implementing the GATT/WTO agreements, governments have the right to enact laws to impose anti-dumping and countervailing duties and to apply safeguard measures (increasing customs or setting quantitative import restrictions) to protect domestic industries. A good number of GATT/WTO members have availed themselves of this right and some make relatively frequent use of protective instruments especially the imposition of anti-dumping duties on dumped imports. Countries that intend to introduce such laws should however, ensure that all their laws conform to the requirements of the respective WTO agreements, namely, the agreement on anti-dumping practices, the agreement on subsidized and countervailing measures, and the agreement on safeguards. WTO also gives members the right to protect vulnerable industries through modification or withdrawal of tariff concessions (bound tariffs), thus enabling them to increase customs duties on specific imported products⁴⁵.

In line with this provision, Zambia has enacted the following statutes.

⁴⁵ Ibid at P. 26

4.2.1 CUSTOMS AND EXCISE ACT⁴⁶

This is an important statute that Zambia uses to restrict imports so as to protect domestic industries and contains several sections in order to achieve this purpose for example section 72 states that “subject to the provisions of section seventy nine, there shall be charged, levied, collected and paid in respect of goods imported into Zambia customs duties at the rates specified in the customs tariff set out in the first schedule in this Act referred to as the customs tariff”. In a situation where for example a Malawian company sells its products in the Malawian market at K12,000.00 and sells the same products on the same terms for exports to Zambia but equivalent price of K10,000.00 then it would be dumping the product on the Zambian market. Article VI⁴⁷ states that “The contracting parties recognize that dumping, by which products of one country are introduced into the commerce of another country at less than the normal value of the products, is to be condemned if it causes or threatens material injury to an established industry in the territory of a contracting party or materially retards the establishment of a domestic industry.” Thus to remedy such a situation Sub-Article 2⁴⁸ provides that “In order to offset or prevent dumping, a contracting party may levy on any dumped product an anti-dumping duty not greater in amount than the margin of dumping in respect of such product. For the purposes of this article, the margin of dumping is the price difference determined in accordance with the provisions of paragraph 1.” Thus in line with these GATT provisions section 74 of the Customs and Excise Act⁴⁹ provides as follows:

⁴⁶ Cap 322 of the Laws of Zambia

⁴⁷ The General Agreement on Tariffs and Trade (GATT 1947, as amended through 1966)

⁴⁸ *ibid*

⁴⁹ Cap 322 of the Laws of Zambia

- (1) In addition to any other duties payable under this Act, there shall be charged, levied, collected and paid in respect of goods imported into Zambia which are of a class or kind specified in the third schedule a dumping duty calculated in accordance with the provisions of this section
- (2) the amount of dumping duty payable under this section in respect of any goods shall be (a) in the case of goods for which there is an export price, an amount equal to the amount by which the domestic value of the goods exceeds the export price thereof (b) in the case of goods for which there is no export price, an amount equal to the domestic value of the goods.

This provision entails that if the Malawian company selling its products at K12,000.00 on the Malawian market sells the same products on the same terms at K10,000.00 on the Zambian market, then in order to offset the dumping, Zambia is permitted to expose those duties of K2000.00. Furthermore, if it cost the Malawian company K10,000.00 to produce its products and then it decides to sell it on the Zambian market at K8,000.00 then this would also be dumping at the amount of K2000.00. The former case involves international price discrimination and the latter below cost sales. In a situation where an exporting member country provides subsidy to its products to the point of making the price lower than the like products in the importing country in this case Zambia, then Zambia can restrict the imports by charging countervailing duty. Article VI (3)⁵⁰ states that "The term 'countervailing duty' shall be understood to mean a special duty levied for the propose of offsetting any bounty or subsidy bestowed, directly or indirectly, upon the

⁵⁰ The Agreement on Tariffs and Trade (GATT 1947, as amended through 1966)

manufacture production or export of any merchandize”. Zambia can charge countervailing duty under section 74 (1)⁵¹ which provides as follows,

In addition to any other duty payable under this Act and subject to section seventy-five and seventy-nine there shall be charged, levied, collected and paid in respect of goods imported into Zambia which are of a class or kind specified by the minister, in a statutory instrument countervailing duty calculated in accordance with this section. (2) The amount of countervailing duty payable under this section in respect of any goods shall be an amount equal to the amount of any export compensation, incentive, subsidy or other payment paid or payable to an exporting manufacturer or supplier, in respect of the export of the goods specified under subsection (1).

Another provision through which Zambia restricts imports is provided for under section 76.A⁵² which provides that “There shall be charged, levied, collected and paid in respect of goods imported into Zambia excise duties at the rates specified in the excise tariff set out in the second schedule.” Then section 191(a)⁵³ provides that “Goods imported into Zambia shall be liable to the rates of customs duty and surtax, other than surtax on cigarettes, which are applicable to those goods at the time when they are imported or at the time when they are entered for consumption, whichever shall be latter so, however, that in no case, except in the case of goods properly taken out of bond shall the duty be less than that payable at the time of importation”.

⁵¹ Customs and Excise Act Cap 322 of the Laws of Zambia

⁵² *ibid*

⁵³ *ibid*

4.2.2 THE CONTROL OF GOODS ACT⁵⁴

This Act aims to restrict the importation of goods into Zambia for various reasons for example if there is abundance of that product in the country then a permit is required under which it is specified as to the amount of that product which can be imported into the country. The second schedule under paragraph 3 and 4 outlines the goods for the import of which a permit issued under paragraph 3 is required as follows “bananas, beans excluding (a) beans which are tinned, bottled or otherwise preserved (b) seed beans in quantities of less than 2001 b, butter, cheese excluding tinned or bottled cheeses weighing one pound or less, cattle; beef, veal and edible products manufactured from the carcasses of cattle, but excluding sausage casings, citrus fruits, groundnuts excluding suited or roasted peanuts, honey, maize including (a) crushed maize (b) dried maize on or off the cob (c) sump; but excluding green maize on the cob, potatoes, live poultry including day-old chicks, tomatoes excluding canned tomatoes, onions, vegetable oils but excluding almond oil, castor oil, coconut oil, linseed oil, olive oil and sesame oil.” The Act also contains several other types of goods under which a permit is required to import them thereby providing a mechanism under which certain goods and quantities are restricted from entering the country if they are not needed. In order to protect domestic industries producing goods like soap, section 4 provides that “ “The words, “pure” , “purest”, “best”, “superior”, “finest”, “first grade”, “first quality”, “No quality”, “A I quality,” “highest grade”, “highest quality”, or any other words indicating or suggesting special grade or quality, shall not be printed or market on, or on the container or wrapper of, any soap which contains sixty-two per centum of fatty acids of which not more than

⁵⁴ Control of Goods Act Cap 421 of the Laws of Zambia

one-quarter may be replaced by resin acids”. This protects locally produced soap from being viewed as “inferior”, “low quality” or “as low grade”.

4.2.3 THE AGRICULTURE (FERTILIZERS AND FEED) ACT⁵⁵

This Act significantly helps to restrict imports through for example section 38 which states that The minister may, from time to time, by regulation, restrict ... the importation of any particular farming requisite or class of farming requisites into Zambia, without the prior written consent of the minister” . In such a way domestic industries are protected because if they have enough farming requisite then the minister can restrict the importation of that particular farming requisite.

4.2.4. THE PLANT VARIETY AND SEEDS ACT⁵⁶

Section 39(1) of this Act provides that “the minister may, from time to time and as often as he deems it expedient so to do, by regulation, restrict ... the importation of any particular variety or class of seed into Zambia and may from time to time by regulation amend or revoke any such regulation (3) in this Act ‘restricted seed’ means seed the importation of which is, by virtue of a regulation made by the minister under this section, for the time being restricted”. This indeed is a protective measure aimed at controlling the importation of seed by restricting those seeds not needed in the country because for example there is already abundance of them.

⁵⁵ Cap 226 of the Laws of Zambia

⁵⁶ Cap 236 of the Laws of Zambia

4.2.5 THE NOXIOUS WEEDS ACT⁵⁷

This Act under section 11(1) provides that “the minister may, by regulation...restrict the importation...of any noxious weed or any part therefore or of any seed with which the seed of any particular noxious weeds has become mixed and such regulations may prescribe the powers and duties of officers in relation to the enforcement of such regulations”. This aims at not letting noxious weeds be imported into the country for they can be detrimental to the general populace.

4.3 SANITARY AND PHYTOSANITARY MEASURES

Article 13⁵⁸ provides that “members shall ensure that they rely on the services of non-governmental entities for implementing sanitary or phytosanitary measures only if these entities comply with the provisions of this agreement”. In line with this provision Zambia has enacted several sanitary or phytosanitary measures which include the following

4.3.1 THE FOOD AND DRUGS ACT⁵⁹

The section, which is of particular relevance here, is section 20(1) which provides as follows:

⁵⁷ Cap 231 of the Laws of Zambia

⁵⁸ The General Agreement Tariffs and Trade (GATT 1947, as amended through 1966)

⁵⁹ Cap 303 of the Laws of Zambia

Subject to the provisions of subsection (2), the importation of any article, which does not comply, with the provisions of this Act is hereby prohibited. (2) where an article sought to be imported into Zambia would, if sold in Zambia, constitute a contravention of this Act, the article may be imported into Zambia for the purposes of satisfactorily re-labeling or reconditioning the same so that the provisions of this Act are complied with and, where such re-labeling or reconditioning is not carried out within three months of the importation, such article shall be exported by the importer within a further period of one month or... such other period as the minister may determine.

Then section 23(1) further provides that “Subject to the provisions of subsection (2), the minister may, after consultation with the board, by statutory instrument make regulations (d) respecting the importation...of food, drugs, cosmetics and devices in order to ensure compliance with this Act.” This Act plays a significant role in ensuring that certain types of food or drugs are restricted on importation for they might prove to be injurious to health or they might be in abundance in the country.

4.3.2 THE PUBLIC HEALTH ACT⁶⁰

The sections which are of significant relevance here include section 49(1) and section 79. Section 49(1) provides that “The minister may, by statutory notice...restrict or regulate the...importation into Zambia of any person, animal, article, or thing likely, in his opinion to introduce any infectious disease, or impose restrictions or conditions as

⁶⁰ Cap 295 of the Laws of Zambia

regards the examination, detention disinfection or otherwise of any such person animal, article or thing.” Section 79 further provides that “No person shall sell or ...bring into Zambia ...without reasonable excuse any food for any animal in an unwholesome state or unfit for its use, and any medical officer of health, veterinary officer, sanitary inspector...may seize any such food, and any...veterinary officer may order it to be destroyed”. Both these sections aim at restricting imports so as to protect domestic industries and the general populace from been harmed. Other sanitary or phytosanitary measures, which Zambia has put in place, include the following Acts:

- Dairies and dairy produce Act⁶¹
- Pig industry Act⁶²
- Cattle cleansing Act⁶³
- Stock diseases Act⁶⁴

⁶¹ Cap 342 of the Laws of Zambia

⁶² Cap 251 of the Laws of Zambia

⁶³ Cap 248 of the Laws of Zambia

⁶⁴ Cap 252 of the Laws of Zambia

CHAPTER FIVE

RECOMMENDATIONS/CONCLUSION

5.1 RECOMMENDATIONS

5.1.1 PRIORITY IN IMPLEMENTATIONS

It is cardinal to note that even though Zambia has derived some benefits as a result of its involvement in the multilateral trading system created by GATT, she still has to do more in order to phase out that miasma of chronic poverty deeply engraved in the fabric of her society. One of the reasons why Zambia does not seem to be benefiting fully from the GATT is largely due to lack of priority in implementing the GATT. A developing country like Zambia should not put priority of implementing GATT rules on things like folk lifts. It might be argued that this is implementing the GATT but a critical analysis reveals that it is manifestly bereft of reason to suppose that reduction of customs duty on products like folk lifts can at the moment enable the country to phase out the miasma of chronic poverty. Thus, Zambia should not just be implementing the GATT for the sake of doing so by virtue of its membership but should rather take into consideration certain products that should take priority over things like folk lifts. A quintessence of such products the country currently needs is our staple food crop maize. Maize is undoubtedly the economic bedrock of all typical Zambian families and thus the country or the government in power must always ensure that they reduce the customs duty on this product. It would be a fallacy to suppose that Zambia does not need to reduce customs duty on maize so as to import some merely on the grounds that the government says so. This is premised on the grounds that such statements are merely “political propaganda” calculated to carpet gross inefficiency of government done at the expense of poor innocent

Zambians, for example, the MMD government this year boasted of the winter maize through which it bluffed that there would be no need of importing maize but what is obtaining on the ground is that there is rampant hiking of mealie meal prices which an indication of the shortage of the commodity in the country. Thus maize should be imported but what should be the issue is regarding the quantity to be imported and not whether or not it should be imported.

5.1.2 EXPEDITING THE PROCESS

The GATT provisions if implemented indeed economically help a country but in order for this to be fully realized then Zambia have to expedite the process of implementation. As earlier noted, Zambia is indeed implementing the GATT but the problem is that the process is too slow. Thus in order to expedite the process Zambia has to put in place a deliberate policy under which it will categorically state what provisions of GATT will be implemented at a certain time. It has to be comprehended that the more Zambia implements the GATT, the more benefits it gains and thus it is in this vein that Zambia has to put in place a comprehensive deliberate policy with clearly laid out time frames within which it has to implement certain GATT provisions.

5.1.3 DEVELOPING INDUSTRIES

The preamble of the GATT 1994 categorically states that its objective is to provide industries and business enterprises from different countries a secure, stable and predictable environment. This is good for industries but in the case of Zambia it is less beneficial on the grounds that Zambia has little industries, which benefit from it. Thus

Zambia has to develop industries, which are indeed the bedrock of economic development. Zambia's developing of industries will thus enable it to fully benefit from the first rule of GATT, which is about protection of domestic industries. Industries will enable Zambia to be economically viable. The more industries Zambia will develop, the more competitive the economy will become causing people to be disciplined and work extra hard thereby providing the Zambian citizenry and the world at large with excellent products as Musambachime argues quite convincingly to the effect that "competitiveness and efficiency are factors of social discipline. The more disciplined a society as a whole becomes, the more hard working and efficient it becomes, and the more competitive also its economy becomes."⁶⁵ This is possible in Zambia provided there is good governance, accountability and transparency.

5.1.4 USING MONEY FOR INTENDED PURPOSE

It is indeed very clear that Zambia generates money as a result of implementing the GATT provisions like using tariffs, imposing anti-dumping and countervailing duties and safeguard measures like increasing customs. The money generated from such methods of restricting imports is supposed to be used for the intended purpose if Zambia is to develop. This money should not be siphoned to be used for selfish purposes.

It has to be noted that one of the biggest problems why Zambia does not seem to be benefiting from the GATT, as she should, is lack of using generated money for the intended purposes. When Zambia imports goods and uses tariffs, imposes anti-dumping

⁶⁵ Musambachime M.C. A paper presented at the AGM of Professor's World Peace Academy, Livingstone July 1994.

and countervailing duties and safeguard measures like increasing customs, this money should be for the good of the country. One of the ways the money generated can be used is to ensure that it is used to reduce taxes of Zambians so as enable them easily buy such products. Tax keeps on increasing notwithstanding the fact that Zambia generates such money from the GATT. This money can also be used to develop some industries.

5.1.5 PROVISIONS OF ADEQUATE RESOURCES

It has to be stated with a great sense of cogency that the institutional capacity of the Ministry of commerce, trade and industry must be prioritized and provided with adequate resources so as to advance and enable her integration and derive tangible benefits in the multilateral trading system. The Ministry of Commerce, trade and industry is indeed very cardinal in helping Zambia derive tangible benefits from GATT thus the need for the country to provide this ministry with adequate resources. This in turn will benefit the country as a whole provided it is ensured that such resources are utilized for the intended purpose of enabling Zambia fully implement the GATT. These resources if provided should not be siphoned by greed individuals at the expense of the nation. The minister of commerce, trade and industry should freely exercise his discretion of sectors of industries that are ready to take advantage of Zambia's membership to the multilateral trading system.

5.2 CONCLUSION

It has to be cogently stated that a critical analysis of the aforementioned chapters shows that Zambia's engagement in the multilateral trading system created by GATT is in a lot of ways benefiting her as a result of implementing the GATT but she has to take priority in what to implement first so as to fully benefit the country. Zambia's engagement in the multilateral trading system has enabled her for example to enable more of her citizenry have access to mobile phones through reduction of customs duty from 15% to 0%. This is very good for the country, as it has enabled many exporting countries to be exporting products to Zambia, which in turn is economically helping her. The implementation of the GATT by Zambia has seen some Zambian companies benefit from GATT programmes like the GSP whose practical example is AGOA. These Zambian companies include Unily Garments, Zambia China Mulungushi Textiles which have all been identified by Comesa to be ready to take on the AGOA Market.

Thus in order for Zambia to fully benefit from GATT it has to take a step further and expedite the implementation because the more she implements the GATT, the better. Thus in order to avoid just being eclipsed in utopian dimensions of how Zambia will economically develop, there is need to actually work towards that.

Zambia thus has to microscopically digest the GATT provisions and ensure that she fully benefits from it.

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