

FREE ZONES, COVID-19 LOCKDOWN, AND 'THE MORNING AFTER'

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Following the growing number of countries battling with the novel coronavirus (COVID-19) outbreak outside China, the World Health Organization on 11 March 2020 announced that COVID-19 can be characterized as a pandemic. In the absence of a known cure or proven vaccine, palliative policy responses in many countries towards containing the outbreak include recommending social distancing, adopting a work-from-home policy, government receiving and distributing food items and medical supplies to the most vulnerable, border closure, economic shutdown and lockdown among others. There are debates about the effectiveness of these palliatives, especially the border closure and lockdown in Africa. While this article does not share in the zero-sum mentality that it is either countries adopt lockdown, or they do not (as graded levels of lockdown smartly mixed with other measures may prove effective), it however questions the extension of the COVID-19-inspired lockdowns to free zones. Will exempting free zone operations from the lockdown areas erode the gains otherwise recorded by many host states? Can governments stimulate the floundering macro economy using the zone scheme? This article will provide a few insights.

As an investment policy mechanism, export-oriented strategies are aimed at promoting industries that orient a substantial part of their production to foreign market.¹ The free zone scheme was traditionally developed as an export-oriented strategy. Different free zone models have however developed over time, emerging with varying but overlapping features and include, but not limited to: Free Industrial Zones, (FIZs), Free Trade Zones (FTZs), Export Processing Zones (EPZs), Customs Free Zones (CFZs), Free Economic Zones (FEZs), Special Economic Zones (SEZs), industrial zones or parks and many others.² For the purpose of this article, the phrase 'free zone' is adopted to represent all of them.

What are free zones?

Beyond the common misconception that they are merely tax or customs duty exemption areas, free zones are (usually offshore) flexible policy enclaves construed by legal fiction to be separate from other parts of the host country, but with interrelated legal, regulatory and fiscal incentives geared towards attaining industrialization.³ A free zone has also been described as 'a delimited geofigureic area within a country with a zone management providing infrastructure and services to tenant companies,

¹ Jose Daniel Amado 'Free Industrial Zones: Law and Industrial Development in the New International Division of Labor' (1989) 11:1 *University of Pennsylvania Journal of International Business Law* 81-131, 82.

² Nojeem Amodu 'An Examination of Governance and Operational Framework Free Zones in Nigeria' (2018) 9:1 *The Gravitas Review of Business & Property Law* 31-49, 31.

³ Id.

where the rules for doing business are different - promoted by a set of policy instruments that are not generally applicable to the rest of the country'.⁴

The idea behind the free zone scheme transcends export-promotion objectives, foreign exchange generation, or even the attraction of foreign investment. Particularly for the purpose of this article, by carving out specifically legislated areas, a developing country can gracefully operate a dual economy.⁵ This is why states adopting the free zone investment strategy provide in the zones (and where necessary, solicit relevant support from the promoters, corporations or individuals, of such zones) the so-called quasi incentives including necessary infrastructure, banking facilities, security, hospitals, good road network, schools, restaurants, among others independent of economic and business operations outside the zones. This is done towards promoting a dual or multiple economy framework and limiting interaction with the mainstream economy in the customs territory.⁶

Although movement in and out of free zones are generally controlled, zones do not exist in isolation. The zone is a legal fiction because territorially, it physically exists within the host state but accorded a uniquely relaxed (though not necessarily or constantly conflicting) legislative framework different from that applicable in the customs territory. It is therefore not out of place for legislative and regulatory requirements applicable in the host state customs territory to also be applicable in the zones (to the extent not excluded by enabling laws in the zones) especially where such requirements do not countervail the purpose for which such zones were created.⁷

Unlike the early single-factory export processing zones, zone operations are no longer restricted within any sector or industry of the economy. In fact, many host states now experiment and find innovative use for zone operations by designating (or expanding existing ones) new policy enclaves as smart cities, and special economic zones to address specific economic, health or industrial needs from time to time. Such innovative use has not only been successful in China⁸ and in the Middle East⁹ but also replicated in other parts.¹⁰ Towards securing socio-economic rights together with

⁴ Michael D Wong and Johanne Buba *Special Economic Zones : An Operational Review of their Impacts* (Washington DC: World Bank Group, 2017) 11, available at: <http://documents.worldbank.org/curated/en/316931512640011812/Special-economic-zones-an-operational-review-of-their-impacts> (accessed 25 April 2020).

⁵ Samuel W Bettwy 'Mexico's Development: Foreign Trade Zones and Direct Foreign Investment' (1985) 22 *Comparative Juridical Review* 49, 56.

⁶ All other parts of the host state outside the designated zone (separated by means of a legal fiction) are considered the customs territory.

⁷ For instance, see sections 21(1)(b) and 24(1) of the Nigeria Export Processing Zones Act, Cap. N107 Laws of the Federation of Nigeria 2004; see also, the 17 March 2020 decision of the Nigerian South-South Zone Tax Appeal Tribunal sitting in Benin in the unreported case of *West Atlantic Shipyard Limited v. Federal Inland Revenue Service* Appeal No. TAT/SSZ/005/2018.

⁸ See for instance the Chinese Shanghai free trade zone, <https://www.dw.com/en/china-opens-free-trade-zone-in-shanghai/a-17121642> accessed 25 April 2020.

⁹ See Dubai Internet City, Dubai Industrial City, Dubai Health Care City, Dubai Media City, Knowledge Village, Dubai Multi Commodities Centre *et cetera*.

¹⁰ Tang Xiaoyang *How Do Chinese 'Special Economic Zones' Support Economic Transformation in Africa?* (Supporting Economic Transformation Policy Brief, July 2015) 4, available at:

important health and safety requirements, an effective governance and management framework closely monitored by competent zone management companies and regulators underpin successful zone operations.¹¹ While it may seem uneasy to determine whether free zones have specifically achieved their objectives, empirical studies have nonetheless established that despite not displaying exceptional economic trajectories, the zone scheme has positively affected the economic performance in the zones and host state surrounding areas.¹² Clearly, well designed and managed free zone operations can serve as effective stimulus to the struggling economy of host states.

Free zone operations during the pandemic and lockdown?

From the foregoing, it appears host states with effective zone management and regulatory structures will cope better in the wake of the COVID-19 pandemic and associated lockdown. While it is extremely challenging to manage the health crisis in the customs territory, as the world has realised, the very nature of the policy enclaves of free zones with independent infrastructure and controlled movement admits of better coping mechanisms not just for residents in such zones but also for the larger economy of the host state. While health guidelines and regulations applicable in the customs territory will be useful and should not be sacrificed in the zones, the strictly controlled movement and services within free zones by competent zone management companies and regulators afford host states the opportunity to monitor health and safety zone standards towards containment of any further outbreak within the zones. This is useful because free zone operators, enterprises and their workers have adequate infrastructure (including housing, medical, banking, security among others) within the zones to remain therein, and with limited interaction with the customs territory. Again, there is also adequate infrastructure to manage the limited interaction with the customs territory in terms of transporting produced materials or sourcing raw materials from the customs territory. Therefore, if the economic or commercial activities in the zone are carried out adhering to relevant medical guidelines issued by competent regulators within the zones, essentially needed commodities, goods and services in the customs territory may be produced in the zones and safely exported for use in the customs territory and beyond. This arrangement supports needs in the customs territory but with very minimal and safely managed interaction with it. such essential goods may vary from one society to the other and at different times and on this note, the Kenyan Ministry of Health already announced plans for mass production of personal protective equipment (PPE's) to be rolled out from a free zone after relevant compliance certification.¹³ In the same vein, rather than lockdown all construction activities, states like Nigeria with heavy dependence on foreign refined crude products may safe herself some foreign exchange reserves by encouraging and

<https://set.odi.org/wp-content/uploads/2015/07/How-Chinese-SEZs-support-economic-transformation-in-Africa.pdf> (accessed 25 April 2020).

¹¹ Wong and Buba note 4 above at 44.

¹² Ibid at 6.

¹³ <https://www.africa-newsroom.com/press/coronavirus-kenya-mass-production-of-personal-protective-equipment-ppe> accessed 25 April 2020.

intensifying constructions of petroleum refinery and polypropylene plants during the pandemic within her well-regulated and managed free zones.

The point being made is that while it is inevitable that states around the world will exclude sensitive sectors from the lockdown areas to avoid total economic paralysis,¹⁴ extending such exemptions to free zone operations provide a unique framework to sustainably stimulate the macro economy as essential goods and services may be produced during the lockdown in controlled enclaves where not only health risks and challenges such as COVID-19 are better managed by zone regulators but also where otherwise overly bureaucratic legislative and regulatory burdens in the customs territory are avoided, boosting productivity at such critical time. The zones, by their design, also provide states the added advantage of better infrastructural facilities and reduced population to easily trace and nib in the bud any instance of threatened pandemic or outbreak in the zones. The economic dualism afforded by the zone scheme not only guards against total economic paralysis during the lockdown but also reduces the geographic communal spread of the virus at the minimum. The little or minimal economic or commercial activities in such zones under carefully designed medical guidelines may not only constitute what host states require to keep some critical parts of their systems afloat while gradually easing out the lockdown but may also help in kick-starting economic recovery after the lockdown with very minimal risk of relapse or communal spread.

Conclusion

In conclusion, the above does not eliminate the risk of the disease spreading from zones to customs territory and *vice versa*. However, what it does is reduce transmission risks within such enclaves with developed supporting infrastructure while critically required goods and commodities are safely produced. This will appear a better risk management strategy than an absolute lockdown or randomly granting exemptions to sectors and industries in the struggling customs territory. how quickly or fully economies can bounce back after the crisis will depend on the nature of coping initiatives employed during the pandemic.

Apart from the challenges presented by the pandemic, governments in developing economies have the existing difficulty of providing basic public goods and social services even during normalcy. How quickly or fully economies recover after the crisis may depend on the nature of coping initiatives employed during the pandemic. It is therefore pertinent that governments (especially in the global South) revisit their free zone policy architecture to create a reliable alternative economy with which to stimulate the macro economy especially when the risks associated with sustaining economic activities in the customs territory may be too high. In situations such as the

¹⁴ In India, activities like agriculture, e-commerce, manufacturing and IT services are being exempted to mitigate hardships to the public. <https://www.news18.com/news/india/no-public-gatherings-in-up-till-june-30-says-cm-adityanath-2592401.html> accessed 25 April 2020. Similar exemptions from the lockdown abound in Africa; see <https://www.cnbcfric.com/coronavirus/2020/03/29/covid-19-lagos-fct-ogun-state-to-go-into-lockdown/>; and; <https://www.businesslive.co.za/bd/national/2020-03-25-sas-fuel-imports-to-drop-metal-refineries-to-continue/> accessed 25 April 2020.

present pandemic, while reducing to the barest minimum exemptions granted within the customs territory, free zone operations could be flexibly expanded and operators flexibly allowed to pivot, as far as possible, into other essential activities such as farming, oil refining, food production and distribution, medical facility construction or equipment manufacture among others depending on the particular state need at any given time. As earlier mentioned, with the added advantage of the exclusion of otherwise burdensome bureaucratic regulatory requirements in the customs territory and a reduced population of actors to contend with, the production of essential goods and services required during the lockdown within zones constitutes a better coping mechanism for host states to address crises in their customs territories. Governments without functional and effective free zone framework may want to develop one to better prepare for future pandemics. For those with functional quasi-incentives and therefore capacity of reducing communal spread, such governments need to engage zone regulators and management companies to encourage commercial activities in such highly monitored policy enclaves as they might constitute the saving grace the morning after pandemics.