

ANALYSIS OF THE LAW AND PRACTICE ON THE EXPORT PROCESSING ZONES IN MAINLAND TANZANIA

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Abstract

This article examines the legal framework governing Economic Processing Zones (EPZs) which are among the key investment tools in Tanzania. It focuses on selected three broad aspects of EPZs, namely incentives, creation of forward and backward economic linkages and promotion of exports. The article shows that the legal framework on EPZs in Tanzania is inadequate. Although the law focuses on creating an investment friendly environment through, for example, providing preferential treatment of EPZ investments, it fails to adequately focus on the balance between the costs of running the EPZs and the benefits to the national economy. The article emphasizes that the law should enable the government to fairly implement the host state's dual responsibility in EPZ investment i.e. protecting investors on the one hand and the national interests on the other hand. In doing this, there should not be fear that investors will be scared away. The reason is that investors are not scared of good regulation; they are scared of a

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regulatory framework that creates unpredictable investment environment.

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1. INTRODUCTION

Tanzania has at various times adopted economic and investment strategies aimed at, among other things, boosting export trade and transforming the economy. One such strategy is the Strategic Industrial Development Plan (SIDP) adopted in 1996 with a view to creating export diversification, economic and technological development through Export Processing Zones (hereafter 'EPZs').¹ Similarly, the Development Vision 2025 was adopted in 1999 in order, inter alia, to transform Tanzania from market-dependent agricultural economy to industrialised economy.² The EPZ scheme was officially established in 2002, through the Export Processing Zones Act.³ At first, the scheme was under the National Development Council (NDC)⁴ but was later placed under the Export Processing Zones Authority (hereafter EPZs Authority),

¹Mnenwa, P., "A Factor in the Formulation and Implementation of Economic Processing Zones in Tanzania" *Research on Poverty Alleviation*, REPOA, 2011, at pp. 2 and 11.

² Page, J., "Industry in Tanzania: Performance, Prospects and Public Policy", *World Institute for Development Economics Research Working Paper*, No.5, 2016, at p.11.

³ Export Processing Zones Act, Cap 373 R.E. 2012.

⁴Mnenwa, *A Factor in the Formulation and Implementation of Economic Processing Zones*, above note 1, at p.11.

which was established following the amendment to the EPZs Act in 2006.⁵

After establishing the EPZs scheme in 2002, deliberate efforts were made to underpin the scheme. For example, in 2004, the Tanzanian government initiated a plan, namely Mini-Tiger Plan 2020, that aimed at accelerating the realisation of the 2025 Vision goals.⁶ This entailed an introduction of an export-oriented economy through, among others, the creation of EPZs.⁷ In 2006, the government established the Special Economic Zones (SEZs) through a piece of legislation, the Special Economic Zones Act.⁸ As this law indicates, SEZs established in Tanzania may take various forms and modalities, including EPZs, industrial parks, free trade zones, free ports, tourist parks, science and technology parks, and any other areas that may be prescribed by the EPZs Authority.⁹ In Tanzania, therefore, EPZs are a form of the SEZs specifically dealing with manufacturing for exports.

Judging from the time the legal framework for EPZs was put in place, the Tanzanian EPZs scheme may appear old. Despite this,

⁵ Export Processing Zones (Amendments) Act, No. 3 of 2006.

⁶ OECD, *OECD Investment Policy Reviews: Tanzania 2013*, OECD Publishing, 2013, p.135, available at <<https://www.oecd-ilibrary.org/docserver/9789264204348-en.pdf?expires=1573736380&id=id&acname=oid015004&checksum=001979C5EA04B3A4F6A307692D0B18CE>> (accessed 14 Nov. 2019).

⁷ Page, *Industry in Tanzania: Performance, Prospects and Public Policy*, above note 2, at p. 11; See also OECD, id, at p.135.

⁸ Special Economic Zones Act, Cap 420 [R.E. 2012].

⁹ Ibid, s. 7. On the types of SEZs and their details see Pakdeenurit, P. Suthikarnnarunai, N. and Rattanawong, W., "Special Economic Zone: Facts, Roles, and Opportunities of Investment" *International Multi Conference of Engineers and Computer Scientists, IMECS Vol. II*, March 12–14, 2014, pp. 1-2, available at <http://www.iaeng.org/publication/IMECS2014/IMECS2014_pp1047-1051.pdf> (accessed 21 August 2019).

operations in the zones have not fully stabilized; they still face a low flow of foreign investments and inactivity of most of the EPZ registered companies.¹⁰ These operational difficulties are attributed, inter alia, to the bureaucratic system in running business and also lack of serviced land.¹¹

The article, analyses the legal framework regulating EPZs in Mainland Tanzania.¹² It analyzes the role of played by law to achieve EPZ the intended objectives. To achieve this, the remaining parts of the article focus on three main areas. The first part outlines the definition, features and objectives of EPZs. The second part entails a critical comment on the law and practice relating to EPZ investment, focusing specifically on three selected aspects, namely incentives, forward and backward economic linkages and promotion of exports. The third and last part carries a conclusion and authors' recommendations.

2. DEFINITION, ORIGIN, SALIENT FEATURES AND OBJECTIVES OF EPZS

2.1 Definition

There is no one authoritative definition of an EPZ. Authors have resorted to descriptive explanations which, in essence, focus on the objectives for which the EPZs are established. Thus, EPZs can be described as specifically designated geographical areas

¹⁰ See generally, EPZA Annual Report, 2014, *EPZs Key Performance Indicators for the Period between 2007 and 2014* (hard copy on authors' file).

¹¹ Serviced land refers to cleared land with the necessary infrastructure for EPZ investors to start business.

¹² From the constitutional set-up of the United Republic of Tanzania, Investment is not a union matter between Mainland Tanzania and Tanzania Zanzibar, which are the two parts forming the Union. See 1st Schedule to the Constitution of the United Republic of Tanzania, 1977. Therefore, Tanzania Zanzibar has its own EPZs scheme whose analysis falls outside the scope of this article. Thus, the word "Tanzania" in this article refers only to Mainland Tanzania.

that have a specific, independent, administrative and regulatory unit.¹³ Their coverage usually ranges between 10 to 300 hectares,¹⁴ and are established specifically to attract domestic and foreign direct investments (FDIs), trade, employment, export and industrial-oriented economy. Administrative and regulatory authorities are usually set up to provide firms operating in these zones with free trade conditions and liberalized regulatory framework.

EPZs are designated for manufacturing exports through which foreign earnings, employment and creation of backward linkages with domestic economy are the main focus.¹⁵ In this regard, they serve as industrial estates with links to trade infrastructure, and also as policy instruments that provide suitable regulatory regimes for promoting exports.¹⁶ They create an environment detached from other areas of the local economy in so far as running business is concerned. Firms, both domestic and foreign, conducting businesses in these special areas can import raw materials and machinery components at a preferential treatment in tax. The raw materials imported, which are usually accorded tax reliefs or exemptions, can either be used for assembly, processing or industrial manufacturing. This is done with a view to eventually

¹³Langa, A., "Trade Agreements, Business and Human Rights: The case of export processing zones", *Corporate Social Responsibility Initiative Working Paper*, Harvard University, 2010, at p. 11, available at <https://www.hks.harvard.edu/mrcbg/CSRI/publications/workingpaper_57_lang_%20FINAL%20APRIL%202010.pdf> (accessed 11 April 2018).

¹⁴ UNCTAD, *Enhancing the Contribution of Export Processing Zones to the Sustainable Development Goals: An analysis of 100 EPZs and a Framework for Sustainable Economic Zones*, New York and Geneva, 2015, at p. 2.

¹⁵ Akhtar, M.H., "An Evaluation of Karachi Export Processing Zone: A Preliminary Investigation 42(4)", *The Pakistan Development Review*, 2004, p. 927, at p. 928.

¹⁶Tanzania Foreign Policy and Government Guide, "Strategic Information and Developments; International Business Publications", USA-Tanzania, 2011, at p. 136.

facilitating production and export of finished products to boost or earn foreign exchange, create employment and attract technology.¹⁷

EPZs are sometimes called free trade zones (FTZs), because they offer free trade conditions to investment firms.¹⁸ However, EPZs differ slightly from other FTZs mainly in that, EPZs focus much on creating export-oriented economy and direct investment motivation, while other FTZs aim at creating industrial enclaves with no specific purpose of export promotion.¹⁹ In addition, EPZs are mostly trade policy instruments which are aimed at promoting non-traditional exports.²⁰ They aim at achieving spillover benefits through learning by locally owned firms, training, skills and know-how acquired by local employees in those zones.²¹

¹⁷ See “Promoting Decent Work in Export Promotion Zones in Indonesia” available at <http://www.ilo.int/public/french/dialogue/download/epzindonesie.pdf> (accessed 11 April 2018).

¹⁸ Yucer, A. and Siroen, J.M., *Trade Performance of Free Trade Zones: The World Economy*, John Wiley and Sons Ltd., Paris, 2016, at p. 3.

¹⁹ Rolfe, R.J. Woodward, D.P. and Kagira, B., “Footloose and Tax Free: Incentive Preferences in Kenyan Export Processing Zones”, 72(4), *South Africa Journal of Economics*, 2004, p. 784, at p. 784.

²⁰ Madani, D., “A Review of the Role and Impact of Export Processing Zones,” 1999, at p. 12, available at <http://siteresources.worldbank.org/Intranettrade/Resources/MadaniEPZ.pdf> (accessed 15 October 2016).

²¹ Belloc, M. and Di Maio, M., “Survey of the Literature on Successful Strategies and Practices for Export Promotion by Developing Countries: IGC International growth center”, 2011, at p. 11, available at <http://www.theigc.org/wp-content/uploads/2011/06/Belloc-Di-Maio-2011-Working-Paper.pdf> (accessed 28 October 2016); See also OECD/EUIPO *Trade in Counterfeit Goods and Free Trade Zones: Evidence from Recent Trends*, OECD Publishing, Paris/EUIPO, 2018, at p. 17.

Therefore, in line with the foregoing, the broad definition used by Farole and Akinci is worth adopting for purposes of this article. The reason is that this particular definition reflects most of the essential characteristics and practices of running EPZs in the world. As elaborated by the United Nations Conference on Trade and Development (UNCTAD), these characteristics and practices include the demarcation of the zones in a separate geographical area; setting up of an independent administrative and regulatory regime of the zones; and relaxation of the laws on taxation and customs duties.²² In this regard, an EPZ can simply be defined as:

A demarcated geographic area contained within a country's national boundaries where the rules of business are different from those that prevail in the national territory. These differential rules principally deal with investment conditions, international trade and customs, taxation, and the regulatory environment; whereby the zone is given a business environment that is intended to be more liberal from a policy perspective and more effective from an administrative perspective than that of the national territory.²³

2.2 Origin

EPZs have a long history in the world of industrial development and export-oriented economy. It has been indicated that the first EPZ was established in Shannon, Ireland, in 1959.²⁴ This was

²² See UNCTAD, *Enhancing the Contribution of Export Processing Zones*, above note 14, at p. 2.

²³ See Farole, T. and Akinci, G., "Introduction" in Farole, T., and Akinci, G., (eds.) *Special Economic Zones: Progress, Emerging Challenges, and Future Directions*, World Bank, 2011, at p. 3.

²⁴ Arnold, D "Spatial Practices and Border Special Economic Zones in Mekong Southern Asia" 6(12) *Geography Compass*, 2012 p. 740, atp. 741.

followed by the EPZs set up in Taiwan and India in 1965.²⁵ EPZs spread rapidly in the middle of 1970s and 1980s.²⁶ However, this is only true as far as modern EPZs are concerned. The origin of the rudimentary forms of EPZs dates back to the early days of free trade across free ports in Europe that aimed at offering environment of duty-free trade.²⁷ Duty-free trade was allowed during middle ages where chartered towns and vicinities in Europe were accorded autonomy in the management of their local business. The autonomy included some exemptions, such as taxes, import duties and other duties and regulations which are common in international trade today.²⁸ Literature indicates that the existence of free-trade zones dates back after the extension of the original concept of a free trade area focusing specifically on manufacturing activities.²⁹

As the foregoing suggests, what existed in the middle ages were not EPZs as they are known today; the practice of excluding business conducted by the chartered towns and localities from the reach of taxes, import duties and regulations reflects the EPZs practice of the modern day.

²⁵ Murayama, M. and Yokota, N., "Revisiting Labour and Gender Issues in Export Processing Zones: Cases of South Korea, Bangladesh and India", 44(22), *Economic and Political Weekly*, 2009 at 73, at p. 78.

²⁶ Chen, X., "The Evolution of Free Economic Zones and the Recent Development of Cross-National Growth Zones" 19(4) *International Journal of Urban and Regional Research*, 2009, p. 593, at p. 593.

²⁷ See Murayama and Yokota, *Revisiting Labour and Gender Issues*, above note 25, at p. 78. See also OECD/EUIPO, *Trade in Counterfeit Goods*, above note 21, at pp. 15–21.

²⁸ Beerepoot, N. and Westen, C.M.A., "The Mactan Export Processing Zone in Comparative Perspective" 29(3) *Philippine Quarterly of Culture and Society*, 2001, p. 226, at p. 226.

²⁹ Organ, I., "Do tax-free zones create employment? The case of Turkish free zone" 9(4) *Journal for Labour and Social Affairs in Eastern Europe*, 2006, p. 127, at p. 127.

In recent times, EPZs have proliferated in many countries, with their operation changing from time to time. However, some original tendencies are still maintained. For example, EPZs are still fenced in the specified areas with independent regulatory regimes. EPZ plants are still subjected to fiscal and operational agreements between the investors and public authorities. These agreements form part of the salient features of EPZs today as discussed in the next section.

2.3 Salient Features of EPZs

EPZs in different jurisdictions share common features. One feature arising from practice is that EPZs are allowed duty-free importation of raw materials with a view to producing exports (industrial) products. They also enjoy preferential legal treatment in some areas, particularly in labour, tax and investment laws. In addition, EPZ firms enjoy long-term tax reliefs and concessions which are not available to non-EPZ firms.

As already noted, EPZ schemes were conceived as vehicles of enhancing export-oriented economy. As such, sale of EPZ products to local markets was not envisioned. However, depending on the law governing EPZs in a particular jurisdiction, there is a growing tendency by which countries allow sales of EPZ's outputs into domestic markets up to a certain share.³⁰ This particular practice is supported by authors who see local sales of EPZ products as a way of integrating EPZs into a domestic economy. In their view, since investors are assured of potential market in the jurisdiction in which the EPZ is established (also known as 'host state'), local sales act as a means of attracting

³⁰ Beerepoot and Westen, *The Mactan Export Processing Zone in Comparative Perspective*, above note 28, at p. 229; Langa, *Trade Agreements, Business and Human Rights*, above note 13, at p. 12.

investors into EPZs. This approach has been adopted by African countries, such as Ghana and Nigeria that allow selling 30% and 25% of EPZ products into their local markets, respectively.³¹ The East African Community Partner States allow sale of EPZ products in the customs territory up to the maximum of 20%.³²

Although EPZs were originally public schemes run by the state, a new or general trend of privately-led EPZs is emerging now.³³ In addition, the practice currently is that the development and management of EPZs may be done at national or regional levels.³⁴ They can also be done through local governments, privately or through public-private partnerships. Therefore, depending on their ownership and management, EPZs can be categorized into three main forms, namely (i) public EPZs; (ii) private EPZs; and (iii) public-private EPZs.

As the name suggests, public EPZs, also known as statutory and government EPZs, are set up and run by the government of the host state. The government provides regulatory mechanisms and all facilities for realisation of the EPZ scheme. Performance of this category of EPZs requires flexible management and regulatory framework, as well as a business friendly environment. Literature suggests that, save for a few ones in Asia, public run EPZs are not usually very successful. The underperformance of public EPZs

³¹ Rolfe, Woodward and Kagira, *Footloose and Tax Free*, above note 19, at p. 797.

³² See Reg. 15(1) (b) (iv) of the EAC Customs Union (Export Processing Zones) Regulations (Annex VII).

³³ Langa, *Trade Agreements, Business and Human Rights*, above note 13, at p. 17; See also OECD/EUIPO, *Trade in Counterfeit Goods and Free Trade Zones*, above note 21, at pp. 16–17.

³⁴ UNCTAD, *Enhancing the Contribution of Export Processing Zones to the Sustainable Development Goals*, above note 14, at p. 3.

has necessitated the resort to either private EPZs or public-private EPZs.³⁵

Private EPZs are those that are run and managed by private owners. The role of the government in this regard is limited to only the creation of the environment for administering the zones. For example, the government grants leases over areas of land to private organizations i.e. developers and operators that set up EPZs ready for investment by way of sub-leasing or licensing.³⁶ Only legislative, regulatory responsibility and executive powers are retained by the public agencies or are sometimes shared by the government and private organizations. A study by the World Bank indicates that whereas in 1975 all special economic zones were owned and operated by governments, 62% of all 2,301 EPZs assessed in developing and transition economies were operated by the private sector by 2007.³⁷ This growing trend responds well to the already referred challenge of underperformance of public EPZs.³⁸

Public-Private EPZs, as the name suggests, are those EPZs owned and managed under public-private partnerships. This model of running EPZs aims at transforming EPZs from narrow enclaves into schemes that are more integrated with local

³⁵ UN Economic Commission for Africa, "Assessing Regional Integration in Africa IV: Enhancing Intra-African Trade", 2010, p. 49, available at <<https://www.uneca.org/sites/default/files/PublicationFiles/aria4full.pdf>> (accessed 9 Nov. 2019); International Business Publications, *Tanzania Foreign Policy and Government Guide, Volume 1: Strategic Information and Developments* (updated Reprint) Washington DC, 2011, at p. 16.

³⁶ Ikeyi, N., "The Export processing Zones and Foreign Investment Promotion in Nigeria: A Note on Recent Legislation" 42(2) *Journal of African Law*, 1998, p. 223, at p. 224.

³⁷ See also OECD/EUIPO, *Trade in Counterfeit Goods and Free Trade Zones*, above note 21, at p. 18.

³⁸ UNCTAD, *Enhancing the Contribution of Export Processing*, above note 14, at p. 5.

development. In this regard, the government cooperates with the private sector in developing an EPZ.³⁹ To achieve this, the government sets up the environment of public and private cooperation in administering the zones. This helps, especially in developing economies, to resolve or alleviate the infrastructural challenges that publicly run EPZs usually face.⁴⁰

All the above forms of EPZs are recognized by the law and can be established in Tanzania. The EPZs Authority can develop EPZs on its own. The Authority can also sub-contract any person to perform its duties, or lease land for an EPZ construction or even enter into a joint venture with the private sector for the development of an EPZ.⁴¹ Currently, the privately-run zones and publicly-run zones are common in Tanzania, albeit in different numbers. There are 56 zones comprising six industrial parks, one government-owned zone, five privately-run zones, and 50 single factory zones.⁴² Moreover, Tanzania is currently undergoing EPZ construction in Bagamoyo under public-private partnership.⁴³

³⁹ BEPZS Authority, "Export Processing Zones in Bangladesh: An Attractive Investment Destination", at p. 10, available at <<http://www.bdembassyuae.org/pdf/EPZ%20in%20Bangladesh%20-20An%20Attractive%20Investment%20Destination.pdf>> (accessed 15 July 2019).

⁴⁰ Domician, C., "An Evaluation of Tanzania's EPZ Programme: Challenges and Prospects", 2009, at p. 50, available at <https://www.researchgate.net/publication/323175416_An_Evaluation_of_Tanzania%27s_EPZ_Programme-Challenges_and_Prospects> (accessed 9 Nov. 2019).

⁴¹ Export Processing Zones Act, (Cap. 373 R.E. 2012), s 13(3).

⁴² See Export Processing Zones Authority (EPZA) at <http://images.mofcom.gov.cn/tz/201607/20160728143103404.pdf>, (Accessed 15 January 2020).

⁴³ See Bagamoyo SEZ Master Plan, EPZA Final Report 2013, available at <<http://www.tdu.or.tz/sites/default/files/Bagamoyo%20Master%20Plan%20Final%20Report.pdf>> (accessed 4 July 2017).

2.4 Objectives of EPZs

With respect to mostly developing economies, special economic zones, such as EPZs, are established to serve, among others, four major or broad objectives. These objectives are to attract foreign direct investments (FDI), to reduce the level of unemployment, to facilitate a wider economic reform strategy through, inter alia, diversification of exports, and to act as experimental 'laboratories' for testing new programmes and policies, such as those relating to land, labour, tax, etc, before the same can be extended to the wider economy.⁴⁴

3. REALIZING OBJECTIVES OF EPZS IN TANZANIA: A CRITICAL COMMENT ON THE LAW AND PRACTICE

As already stated, the Tanzanian EPZs Act empowers the EPZs Authority to subcontract any person to perform its duties regarding development of EPZs. It can also lease land for an EPZ construction, or enter into joint venture with private sector for development of an EPZ. In particular, the law allows the EPZs Authority to license or enter into joint venture agreements with private investors to develop and operate EPZ infrastructure.⁴⁵ This emulates the practice in other areas, such as Asia, where privately

⁴⁴ See, generally, The World Bank Group, *Special Economic Zones: Performance, Lessons Learned, and Implications for Zone Development*, Washington, DC, 2008, available at <<http://documents.worldbank.org/curated/en/343901468330977533/pdf/458690WP0Box331s0April200801PUBLIC1.pdf>> (accessed 9 Nov. 2019). See also Farole, T. and Akinci, G., "Introduction" in Farole, T. and Akinci, G. (eds.), *Special Economic Zones: Progress, Emerging Challenges, and Future Directions*, World Bank, 2011, at pp. 3-8.

⁴⁵ EPZs Act, s. 13(3).

or public-privately owned EPZs are developed successfully.⁴⁶ It is in this regard that Tanzania is, as noted already, undertaking an EPZ construction in Bagamoyo under public-private partnership.⁴⁷ There are other EPZs in Tanzania, such as the Kisongo EPZ in Arusha, Hifadhi EPZ in Dar es Salaam, Kamal Industrial estate EPZ in Bagamoyo, Global Industrial park EPZ in Mkuranga, Kisez SEZ in Kigoma. Despite the presence of these other zones the Bagamoyo project, in particular, is earmarked to provide EPZ and SEZ investors with modern infrastructure and efficient government administrative services.⁴⁸

According to the Export Processing Zones Act, the overriding objective of EPZ scheme in Tanzania is to attract and promote investment for the realisation of export-led industrialisation. In line with this broad objective, investment in EPZs is expected to eventually create foreign exchange earnings, boost employment opportunities and skilled labour, facilitate transfer of technology, link the local economy with the international market, and enhance the processing of local raw materials for export.⁴⁹

3.1 Incentive Schemes: Legal Framework

In order to realize the EPZs objectives, the law puts in place, among other things, an incentive scheme for EPZ investors.

⁴⁶ UN Economic Commission for Africa, *Assessing Regional Integration in Africa IV*, above note 35, at p. 49. Also see World Bank, *Export Processing Zones, Policy and Research Series Report*, World Bank, 1992, at p. 3.

⁴⁷ See Bagamoyo SEZ Master Plan, EPZS AUTHORITY'S Final Report 2013, available at <http://www.tdu.or.tz/sites/default/files/Bagamoyo%20Master%20Plan%20Final%20Report.pdf> (accessed 4 July 2019).

⁴⁸ EPZA, available at <http://www.epza.go.tz/invest.php?p=235> (accessed 4 January 2019).

⁴⁹ EPZs Act, s. 4.

These incentives come in two forms, namely fiscal and non-fiscal incentives.

Fiscal incentives are given not only as a means to entice investors in EPZs but also to create an investment friendly-environment.⁵⁰ For example, the Export Processing Zones Act exempts dividends declared and distributed by EPZ firms to their shareholders from income tax for the period of ten years.⁵¹ Goods and services produced or purchased in EPZs are exempted from all taxes and levies imposed by local government authorities.⁵² Moreover, the Act exempts EPZ firms from payment of corporate tax for an initial period of ten years after which a corporate tax can be charged at the rate specified in the Income Tax Act.⁵³ EPZ firms are also exempted from the Value Added tax (VAT) on utility and wharfage charges.⁵⁴

On top of the tax incentives, the law allows EPZ firms to freely import machineries, which include administrative vehicles, ambulances, firefighting equipment vehicles and up to two buses for transportation of employees to and from the EPZs. The customs duty, VAT and any other tax payable in respect of importation of such articles is remitted to the paying importers.⁵⁵ Furthermore, customs duty, VAT and any other tax payable in respect of goods purchased for use as raw materials in the EPZs, equipment, machinery including all goods and services directly

⁵⁰ *Id.*, s 21.

⁵¹ *Id.*, s 21(1)(d).

⁵² *Id.*, s 21(1)(e).

⁵³ *Id.*, s 21(1)(c).

⁵⁴ *Id.*, s 21(1)(k).

⁵⁵ *Id.*, s 21(1)(i).

related to the manufacturing in the EPZs is remitted to the paying firms.⁵⁶

On their part, non-fiscal incentives are designed on the understanding that running a business in EPZs as in other areas does not solely depend on fiscal incentives. Non-fiscal incentives, too, are meant to create environment friendly to business. These incentives increase competitive advantages to the host state and reduce her overdependence on the fiscal incentives to attract investments. They also reduce investor's over focus on fiscal incentives for investment profits.

Non-fiscal incentives legally available for EPZs in Tanzania include exemption from pre-shipment or destination inspection requirements, accessibility to high quality infrastructure, on-site customs inspection of goods in the EZPs, provision of business visa at the point of entry to key technical, management and training staff for a maximum of two months. The two months visa seeks to enable the staff to process their residence and work permits in accordance with Immigration Act and Non-Citizens (Employment Regulation) Act respectively.⁵⁷

3.2 A Critical Comment on Incentives

The relevancy of some aspects of the fiscal incentives, especially tax exemptions, has been questioned in relation to the returns obtained from the targeted investments.⁵⁸ It has been suggested

⁵⁶Id, s 21(1)(b).

⁵⁷ Id, s 21(h) read together with the Non-Citizens (Employment Regulation) Act, s 26.

⁵⁸ Policy Forum Budget Working Group, "Tanzania and the Problem of Tax Exemptions", at p. 2, available at <http://www.policyforum-tz.org/sites/default/files/Taxpolicybrief.pdf> (accessed 11 April 2018). Also, see Kulaba, M., "Regional Trade Facilitation: Challenges of EPZs and SEZs on East African Regional Trade Integration" *Trade and Investment*, 2015, available at <<http://www.gepc.or.tz/?p=634>> (accessed 14 May 2018).

by Peter that incentives should not be blanket: they should depend on the line of business.⁵⁹As such, if the particular investment in question is very rare in other countries, the EPZ host state should usually demand or benefit more from the investor. But if the investment targeted is widespread in other countries, affirmative measures, including provision of various incentives, such as attractive fiscal incentives, may be required in order to entice investors so as not to leave the host state for other attractive investment destinations.⁶⁰ Managers of EPZs in Tanzania should, therefore, not be oblivious of this reality. Thus, once the EPZ operations stabilise, there will be a need to revisit the broad fiscal incentive schemes elaborated above to ensure that they are not detrimental to the national economy.

Regarding non-fiscal incentives, it is noted that they are a very crucial component in attracting investments in EPZs. For example, most investors are more interested in serviced land. Serviced land refers to a cleared land with the necessary infrastructure for EPZ investors to start business. This entails availability of water, electricity and enabled transportation facilities from the zones to outgoing points for exportation. Moreover, the EPZ industries are supplied with added competitive advantages. As noted by Joseph Simbakalia, Director General of EPZs Authority, it is important to assure EPZ industries with transportation and utility for successful investments and industrialization because transportation and utility determine the costs of running business. In addition, transportation facilities act as a genuine link between the production and trading centers.⁶¹

⁵⁹ Peter, C.M., Interview by author (3 March 2017, UDSM, Dar es Salaam).

⁶⁰ Ibid.

⁶¹ Simbakalia, J., "Tanzania's Past Initiatives and Current Development Towards Industrialization" in Msambichaka, L.A. *et. al.* (eds.) *How can Tanzania Move*

Much as investors are always concerned with fiscal incentives right after they are assured of this enabled infrastructure, these types of incentives are not the only decisive factors for investments. That is why the EPZs law in Tanzania also provides for the non-fiscal incentives to which investors in EPZs are entitled, such as access to competitive, modern and reliable services available within the EPZs.⁶²

Thus, notwithstanding any opposition to incentives on the ground of losing revenue, it is submitted here that incentives are relevant to the EPZs scheme in Tanzania. They serve some purposes, such as attracting investments particularly on widespread investments. They become important because if activities conducted in EPZs in one state are also conducted in many other countries, it is difficult to have sufficient investments without any extra efforts such as incentives, among others, to attract and promote investments.

However, Tanzania should not underestimate the need, importance and role of a conducive political climate, predictable investment policies and the role of physical infrastructure in attracting investors. The three factors could be even more relevant to investors than even fiscal incentives. And where resorted to, as the case has been in Tanzania, fiscal incentives should be specific. That is to say, incentives should target some specific activities that can help EPZ schemes realize the intended objectives. Not all investors should be availed with the same general package of incentives.

Moreover, before directing efforts towards attracting investments in Tanzania, it is important to know who are interested in

from Poverty to Prosperity? Dar es Salaam: Dar es Salaam University Press 2015, p. 43, at p. 67.

⁶² EPZs Act, s 21 (1) (m).

Tanzania, and why. This can only be known by conducting a thorough research to that effect. It is through such research that Tanzania, as a host state, can know what to be done and how to make foreign investments beneficial to the local economy.⁶³ This may work in line with incentive design to ensure they are given to meet the purpose for which they are designed. Currently, the law is general: it does not restrict the available incentives to specific areas, thereby making every business eligible for EPZ to access the same package of incentives. Through this structure, the government loses revenue.

Form an international perspective, the subject of tax incentives has been addressed by the Organisation for Economic Co-operation and Development (OECD). The OECD has outlined at least ten principles that may be useful particularly to developing countries in managing tax incentives.⁶⁴ Among other things, the Principles require that incentives should be administered in a transparent way for the betterment of the host state, the reason being that transparent administration of incentives increases accountability. For example, tax incentives should not be provided through a multiplicity of statutes - there must be specific statutes for investment incentives especially tax statutes in order to get the true extent of the incentives granted. In addition, there should be a periodic assessment of tax incentives in order to establish their performance after a certain period.⁶⁵ Such periodic assessment forms the basis for their continuation or cancellation. This is so

⁶³ Simbakalia, *Tanzania's Past Initiatives and Current Development Towards Industrialization*, above note 61, at p. 70.

⁶⁴ See OECD, "Principles to Enhance the Transparency and Governance of Tax Incentives for Investment in Developing Countries" available at <<http://www.oecd.org/ctp/tax-global/transparency-and-governance-principles.pdf>> (accessed on 12 May 2020).

⁶⁵ *Id.*, at pp. 3-4.

because it is easy to establish the costs of running the incentives and the incidental benefits through periodic review.

These OECD Principles on the administration of investment incentives are valid and commendable. In EPZ investment schemes, the principles would ensure that the EPZ state does not lose benefits as a result of poor administration of investment incentives. However, these Principles are not binding on Tanzania. Administration of investment incentives is an issue related to state sovereignty. As such, it is upon the host state to set principles that regulate investments for her benefits and the investor without harming either side. The OECD principles, therefore, do play a persuasive role to Tanzania. However, it has been suggested that Tanzania should develop a brochure of fiscal incentives that makes them easily accessible. This will assist the investors in tracing what is available in favour of their business instead of visiting many pieces of legislation looking for available incentives.⁶⁶

Investment incentives provided under the EPZs Act are fluid: they are subject to review, modification, variation, addition or alteration. Under section 21 (3) and (4) of EPZs Act, the EPZs Authority board may propose to the Minister for variation, modification or amendment of investment incentives. However, the law does not show the criteria upon which proposals for modifying, varying or amending the types of investment incentives for EPZs activities may be made. This may not serve the purpose of reviewing the incentives which is to establish post establishing impact of incentives on the economy. This is likely to create chances for misuse of incentives for the benefit of the few. It submitted here that there must be a strong structure that ensures the law is not bent for the benefit of the few unethical administrators. It is further

⁶⁶ Peter, Interview by author, above note 59.

submitted that assessing the performance of incentives after certain period is economically healthy. It is upon the results of the assessment that the government decides to continue providing incentives, vary the areas to which the incentives are directed or cancel the incentives. Reviewing incentives aims at looking whether the incentives still serve the purpose for which they were intended.

4. CREATION OF FORWARD AND BACKWARD ECONOMIC LINKAGES

Among other objectives, EPZ scheme in Tanzania aims at creating economic linkages of the local economy with the international market. This usually does contribute to national sustained economic development in the rest of the economy.⁶⁷

Linkages determine whether, and to what extent, the host state is likely to benefit from EPZs.⁶⁸ Economic linkages involve the impact that EPZs may bring into the rest of the domestic economy, and it is assumed that what is done in the zones is of high quality compared to other areas of the economy. This is so because EPZ firms are availed with competitive, modern and reliable services that are not necessarily available to non-EPZ firms.⁶⁹

⁶⁷ Milberg, W., and Amengual, M., *Economic Development and Working Conditions in Export Processing Zones: A Survey of Trends*, International Labour Office, Geneva: ILO, 2008, at p. 21, available at <<http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.490.1514&rep=rep1&type=pdf>> (accessed 11 Nov. 2019).

⁶⁸ Jenkins, M., "Economic and Social Effects of Export Processing Zones in Costa Rica", *Working Paper No. 97*, International Labour Office, Geneva, 2005, at p. 24, available at <http://ilo.org/wcmsp5/groups/public/---ed_emp/---emp_ent/-multi/documents/publication/wcms_101038.pdf> (accessed 11 April 2018).

⁶⁹ EPZ Act, s 21(1) (m).

In Tanzania, EPZ goods can only be taken into the customs territory as imports subject to certain conditions, such as necessary permits from customs authority, payment of all applicable import duties, levies and charges, compliance with all customs procedures under the supervision of a proper officer and maximum limit of 20% of all total products of EPZ firm per year.⁷⁰ This aims at ensuring the EPZ's primary objective to promote exports is not defeated. Moreover, the requirement of entering the EPZ products before the proper officer aims at ensuring the payable import duties on such allowable products is not avoided.

Backward linkages involve issues, such as use of local raw materials in the zones, exports, foreign investment and long term impacts to the domestic economy. Forward linkages entail a sale of a percentage of EPZ products in the domestic market. Forward linkages are usually not preferred by most EPZ (host) states because, as argued, they contradict the main purpose of EPZs, which is to promote exports.⁷¹ Despite this argument, whenever it becomes necessary to allow EPZ firms to make sales in the domestic market, there must be high circumspection. The reason is that for some products, it may be a challenge to quantify in terms of percentage (as threshold for domestic sale). This challenge may be used by unethical administrators for their own gain. It is on this argument that the authors focus on backward linkages that mainly aim at positively impacting the rest of the host state's economy and ensuring the realisation of EPZs main objective, which is to promote exports and other consequential benefits, such as increasing foreign earnings and international competitiveness.

⁷⁰ Id, s 22.

⁷¹ Suzuki, M., "Export Processing Zones and the WTO SCM Agreement" in K Akifumi, K. and Tsuj, M., (eds.) *Industrial Clusters, Upgrading and Innovation in East Asia*, Edward Elgar Publishing Limited, 2011, at pp. 84–85.

In addition, economic linkages may be created through employment of local personnel and prioritizing transfer of new skills and technology to the host state. Therefore, EPZs are used as 'laboratories' in which various experiments are carried out for later test in the rest of the domestic economy. However, this depends on the mechanisms the EPZs law provides to achieve this objective. The law regulating EPZs in Tanzania, for example, only mentions the creation of economic linkages as one of the objectives of EPZs.⁷² It neither mentions nor clearly suggests the means of realizing this objective. However, as the following two sections indicate, economic linkages may be created through use of local raw materials and local personnel.

4.1 Use of Domestic Raw Materials in EPZs

Using domestically produced raw materials by EPZ firms, on the one hand, benefits the host state through integrating the domestic economy with the international economy. This may assist in boosting the export rate of the host state to other countries, for the available raw materials or goods made from such raw materials are better known by the external world in terms of their quality. On the other hand, it assists the local suppliers because they are assured of the markets of their products.

In Tanzania, the EPZs scheme aims at promoting the processing of local raw materials in EPZs for export.⁷³ It is not a legal requirement for an EPZ investor to use locally produced raw materials. The law only makes it an objective to promote processing of local raw materials for export without indicating the mechanisms through which this objective can be realized. EPZ firms, therefore, import foreign raw materials without regard to the

⁷² EPZ Act, s 4(e).

⁷³ *Id*, s 4(f). .

available local raw materials at the expense of the local economy.⁷⁴ The law is also silent on whether before raw materials are imported for processing within the zones, it must first be established objectively that such raw materials are not available domestically.

The silence of the law on the use of local raw materials might have been contributed by the nature of the current EPZ investment in Tanzania. As already indicated, a brilliant performance of EPZs depends on multifaceted factors pertaining to the host state. Such factors include the economic and political situation, the state of rule of law, presence of sound industrial and agricultural policies, etc. For example, most activities currently conducted in Tanzanian EPZs involve the production of garments. This depends on cotton farming which is currently not doing well.⁷⁵ This is in itself a problem. Therefore, when the EPZ Act was enacted, the state of agricultural development in Tanzania could not have given confidence to the law makers to restrict EPZ firms to the use locally produced raw materials.

In order to address the problem above, the agricultural sector must perform better in order to make the EPZs scheme flourish. As Simbakalia rightly puts it, locally produced raw materials should meet the internationally required standards. He epitomizes the Bakhressa Group (of companies) that successfully involves itself in manufacturing and exporting paper packaging products

⁷⁴Kulaba, M., "EPZs Escaping the Taxman? An Assessment of the Impact of Economic Processing Zones (EPZ) and Special Economic Zones on FDI and Revenue Collection Tanzania", *Trade and Investment*, 2015, available at <<http://www.gepc.or.tz/?p=636>> (accessed 11 April 2019).

⁷⁵Kalidusshi, B., "Tanzania Cotton Production and Productivity", (paper presented at the SEACF Conference in Nyeri-Kenya from 26th to 29th August 2012), available at <https://www.icac.org/wp-content/uploads/2012/09/Tanzania_ProdProductivity1.pdf>(accessed 11April 2018).

produced by use of kraft paper, the product of the Southern Paper Mill from Mufindi, Iringa in Southern Tanzania. The availability of kraft paper that meets global standards, avoids the importation of the same product from other countries such as Norway and other Scandinavian countries that are famous in paper production.⁷⁶

The suggestion given by Peter is also very sound. He correctly suggests that EPZ investors should not be restricted to the exclusive use of locally produced goods, nor should they be given total liberty to import raw materials without any limitations whatsoever. Instead, there could be an agreement between the government, through the EPZs Authority, and a particular EPZ investor on the use of local raw materials. According to Peter, in order to achieve this, an economic analysis of the prices of the local raw materials and the prices of the same raw materials from outside Tanzania must be done. The analysis should consider all the costs the investor may incur in case he decides to import raw materials and the costs of using locally produced raw materials and also the quality of local and exotic raw materials. The costs include the transport expenses and the purchase prices.⁷⁷

It is therefore imperative to conduct a market survey before any attempt to impose a blanket ban on the use of imported raw materials in EPZ schemes, especially when same can be obtained from other countries at a cheaper price. The aim is to ensure that both Tanzania and the EPZ investors benefit from the investment. However, the government should not bend too low in the fear of

⁷⁶Simbakalia, L.J., *Tanzania's Past Initiatives and Current Development towards Industrialization*, above note 61, at p. 71.

⁷⁷ Peter, Interview by author, above note 59.

losing investors. The benefits obtained from the said investors under a particular arrangement should be the driving force.⁷⁸

4.2 Employment Opportunities in EPZs

One of the objectives of EPZs is to create and increase employment and develop skilled labour.⁷⁹ This is strengthened by the restriction on the employment of foreigners in the host state without regard to the availability of local persons equipped with the required skills. The foreign investors in Tanzanian EPZs are automatically entitled to only five foreign employees during the start-up period of their investments. If there is any need to increase the number, the investor must apply for authorisation. The EPZs Authority, in consultation with the Immigration Department and Labour Commissioner, authorises any additional number of foreign employees deemed necessary. Some factors are considered in this regard, such as the availability of qualified Tanzanians in the field, complexity of the technology employed by the investor and agreements reached with the investor.⁸⁰

Moreover, the EPZs law aims at developing skilled local labour in order to equip the local personnel with new skills after a certain period. However, this has hitherto been difficult to materialize, because there are no strategies to that effect. For example, there are no mandatory training programmes in the EPZs for skills transfer. In fact, one of the main challenges that face the employment of Tanzanians in EPZs is the absence of skilled labour. This is, in turn, also a challenge to the EPZ firms which require skilled local labour to operate some activities. This

⁷⁸ Ibid.

⁷⁹ EPZ Act, s 4(c).

⁸⁰ See EPZ Act, s 21(1)(l) and Non-Citizens (Employment Regulation) Act, 2015, s 19(2) and (3).

increases the business running costs when the firms are forced to source the skilled labour from outside the country.

Sometimes, the absence of skilled labour for industrialization becomes deterrent to investors. Educating local personnel for offering labour in the EPZs is very expensive and inordinately delays industrialization for the host state.⁸¹ Those who involve themselves in activities outside the EPZs which could also be conducted in the zones, such as welding and sewing, are not well skilled; they produce low quality products. Therefore, employment opportunities may be available, the question remains who is qualified for that employment. Also, it has been discovered that the available skilled personnel, though few, do not hold managerial and technical positions that require technical and managerial skills. It therefore becomes harder for skills acquisition to the local employees.

Furthermore, creating employment opportunities within EPZs is one thing and ensuring the employees benefit from such employment is yet another thing. Payment of wages has been confronted with issues such as extreme underpayment. This has resulted in the disputes between the employees and the government on the payments by the EPZ firms. For example, in 2015, employees of the Tanzania Tooku Garments Company Limited (TTGCL), a company doing business in the EPZ situated at Ubungo External Dar es Salaam, waged a boycott on account of their low wages.⁸² This labour dispute soon assumed a political

⁸¹ Simbakalia, *Tanzania's Past Initiatives and Current Development Towards Industrialization*, above note 61, at p. 49.

⁸² Ally, T., "Ubungo MP Kubenea charged", *The Citizen*, (Dar es Salaam), 16 December 2015, available at <<http://www.thecitizen.co.tz/News/Ubungo-MP-Kubenea-charged/1840340-2998668-view-printVersion-iboc3vz/index.html>> (accessed 9 March 2017).

face: it led to further misunderstanding between the then Kinondoni District Commissioner and Ubungo Member of Parliament (MP) in addressing the dispute. Consequently, the MP was accused of using abusive language that could lead to disruption of peace in the area.⁸³ This shows the sensitivity of labour relations maintenance in EPZs.

It is noteworthy that labour laws apply in EPZs *mutatis mutandis* as a way of creating preferential legal regime.⁸⁴ There is a limited government control in the EPZ firms, thus what transpires between EPZ firms and their employees may not line with the government wishes. It is, therefore, difficult to control the observance of the labour laws of Tanzania by the EPZ firms. Situations such as the one narrated in the in the preceding paragraph may be addressed by implementing the minimum wage schemes available in Tanzania. If the minimum wage does not help, depending on the nature of the work, a prior agreement between EPZ firms and the government on, for example, the minimum wage in favour of the workers of a certain carder may work. This will make the employment opportunities meaningful to local employees and Tanzania at large. This is to suggest that the Tanzanian law on EPZs should be supplemented with legally enforceable agreements providing for the minimum wage to the workers employed in the zones. It will be easy to defend the employees if labour disputes of such nature arise. This is justified, given the incentives that EPZ investors enjoy.

⁸³Odunga, M., "Makonda Testifies Against Kubenea in Dar Court," *Daily News*, (Dar es Salaam), 9 February 2016 available at <<http://allafrica.com/stories/201602090960.html>> (accessed 9 March 2017).

⁸⁴ See EPZ Act, s 28.

5. PROMOTION OF EXPORT

Another key objective of EPZs scheme in Tanzania is to promote exports.⁸⁵ The scheme employs various mechanisms to meet this objective. The law requires that EPZ investors should export not less than 80% of the EPZ total products.⁸⁶ This aims at diversifying and facilitating Tanzania's exports and promoting international competitiveness, creating and expanding foreign earnings and fostering linkages of the local economy with the international market and creating favourable balance of trade.⁸⁷

The research revealed that the EPZs Authority only facilitates the exportation of EPZ produced goods. It facilitates exportation by EPZ firms as a non-fiscal incentive for making Tanzania a good investment destination. This intends to enable Tanzania meet EPZ scheme's objectives. Furthermore, EPZs Authority promotes the investors' products to enhance accessibility of the international markets. For instance, at the Dar es Salaam International Trade Fair (DITF), the Authority promotes the products produced by EPZ firms as a mechanism of promoting exports. It is through this promotion that investors access the international markets for their products. However, it is not a legal requirement for the EPZ Authority to secure markets for EPZs firms. The EPZ investors may look for markets outside the country on their own initiatives in addition to those obtained by the EPZs Authority. They can do so by utilizing options offered by various strategies such as African Growth and Opportunity Act (AGOA).

⁸⁵ *Id.*, s 4(a).

⁸⁶ See Regulation 15 (1) (b) (iv) of the East African Community Customs Union (EPZs) Regulations, Annex VII.

⁸⁷ See EPZ Act, s 4.

AGOA is a United States trade law enacted as a USA trade and investment preference scheme. It intends to create the export led-economic growth and development in sub-Saharan African countries, the AGOA countries.⁸⁸ The expectation is that the opportunity will ultimately create robust economic ties between the targeted countries and the USA. The programme significantly allows market access to the USA for qualifying countries duty-free. Duty free importation of finished goods especially apparel into USA under the AGOA programme is allowed upon certain conditions such as direct movement of goods from the AGOA country to the US. Also, at least 35% of the value of the product in terms of growth or manufacture or producing must be of beneficiary country or another beneficiary country.

However, two challenges are noted. First, some products, such as agricultural products, which form the basis of economy in most developing countries, are either excluded or limitedly allowed in the United States market under the AGOA strategy.⁸⁹ Second, AGOA apparel production has little contribution on skills transfer to local workers. This lowers their competition in global settings; hence, local exporters depend on preferential treatment and not on competition.⁹⁰ From its inception, the AGOA contained provisions for abundant supply of apparel. These provisions were aimed at setting conditions for local textile fabric sourcing. This was so because it was considered that the AGOA-eligible members have sufficient quantities of fabric.⁹¹

⁸⁸ See, generally, Williams, B.R., "African Growth and Opportunity Act (AGOA): Background and Reauthorization" 2015. Congressional Research Service, available at <<https://agoa.co.za/images/documents/5450/r43173.pdf>> (accessed 12 November 2019).

⁸⁹ *Id* at p. 3.

⁹⁰ *Id* at p. 13.

⁹¹ See "About AGOA" available at <<https://agoa.info/about-agoa.html>> (accessed 15 January 2020).

The EPZs Authority encourages the interested persons to invest in EPZs and take advantage of AGOA, namely having easier access to the USA markets duty free. For instance, the Tanzania TookuGerments Limited (TTGCL), a manufacturer specialised in the research, development and production of garments, has enormously taken the advantage of the AGOA strategy. All its products are for export. It deals with garments production, the export of which Tanzania stands to benefit. It is submitted that in the long run this may help in increasing foreign currency in Tanzania and cultivate linkages of the local economy with the international markets.

However, securing the AGOA opportunity by Tanzanian producers and exporters remain challenging. For example, regardless of the AGOA opportunity, Tanzania's penetration into the US market dropped from 18.8% in 2000 to 4.1% in 2015.⁹² The reason is that trading in the zones has dropped drastically over the years – a fact which irks the authorities concerned. This is different from other countries using the same strategy. For instance, the Kenyan exports to the US through AGOA increased from 56.45% in 2000 to 83.5% in 2005 and 95.39% in 2015.⁹³ The reason for such increase, it is established, is the progressive trading in the preferential zones, such as EPZs and availability of robust and sharp-eyed farmers' institutions that facilitate and disseminate information on the availability of export opportunities through

⁹²Kimah, B., "Tanzania: Failure to tap AGOA market irks Ministers" *Daily News*(Tanzania)10 May, 2015, available at <<https://agoa.info/news/article/5683-tanzania-failure-to-tap-agoa-market-irks-ministers.html>> (accessed 25March 2017).

⁹³ Ibid. For more on Kenya and AGOA see Phelps, N.A. Stillwell, J.C.H. and Wanjiru, R., "Broken Chain? AGOA and Foreign Direct Investment in the Kenyan Clothing Industry"37(2) *World Development*, atpp. 314-25.

AGOA programme.⁹⁴ Consequently, the rate of exports in Tanzania keeps on changing in a descending order.⁹⁵

It seems that that having duty free access to US markets may not solely sufficient for assurance of markets. Some EPZ companies may need contracts with international companies which assure them of markets. Without this prior arrangement, some companies may fail to secure markets in the United States. The EPZs Authority should endeavor to reveal this information to companies that aspire to invest in EPZs and use the AGOA strategy. If these weaknesses are addressed, Tanzania may stand to benefit from AGOA and do more than what has been done so far.

6. CONCLUSION AND RECOMMENDATIONS

6.1 Conclusion

This article has discussed the legal and practical aspects relating to EPZs in Tanzania. It has outlined the meaning, features and objectives of EPZs. A specific focus has been on the three areas relating to EPZs in Tanzania, namely incentives, forward and backward economic linkages and promotion of exports.

It has revealed that Tanzania's experience in the development of export economies through EPZs is still very limited. Although some progress has been made, Tanzania cannot boast to have achieved much from the EPZ operations. Thus, EPZs cannot be counted as one of the main contributors to the Tanzania's economy. The development of EPZ scheme entails developing various zones countrywide. The positive response to this

⁹⁴Kimah, *Tanzania: Failure to tap AGOA market irks Ministers*, above note 92.

⁹⁵ Bank of Tanzania, *Monthly Economic Review*, May 2017, p. 14, available at <<http://www.bot.go.tz/Publications/MonthlyEconomicReviews/MER%20May%202017.pdf>> (accessed 1 July 2017).

development is indicated by the growing desire of private zones developers, operators and the private property development groups. Many EPZs are still under progress except for the Benjamin William Mkapa Special Economic Zone.

The article has identified different fiscal and non-fiscal incentives as being the main types of incentives available for EPZ investors. Generally, the article has indicated that designing an incentive package for EPZ investors is not a bad thing as incentives are an important impetus for the foreign direct investments. However, the article has flawed the overgenerous and general fiscal incentives, specifically long tax holidays, available for EPZ investors. The ultimate danger in this regard is that the EPZ investors may ultimately benefit more from the tax holidays than the country can benefit from the operations of the EPZ investors. One obvious risk in this regard is the lack of guarantee that a particular EPZ investor will not cease operations after the expiration of the tax holiday. Even though Tanzania is yet to experience the situation where investors leave the country after the expiry of tax holidays compared to the life of the EPZ scheme so far, the experience from other jurisdictions shows that this has happened. Thus, a call for a periodic review of the fiscal incentives is made.

Regarding creation of local economic linkages with international market, it has been shown that the law envisions EPZs as an opportunity to create economic linkages with the rest of the economy through the use of locally produced raw materials and employment opportunities for local people. In this regard, EPZs are designed as a trickle-down impact model through which all 'experiments' done in the zones as 'laboratories' should positively impact the rest of the host state's economy. However, it has been shown that the law in Tanzania is not elaborate enough in terms of the mechanisms through which this objective can be realized. The

law is silent on the source of raw materials for industrial purpose in the EPZs, meaning that EPZ firms can choose to secure raw materials from outside Tanzania. In addition, even if EPZ firms were to be obliged to secure their raw materials from within Tanzania, still there is no guarantee that there would be enough supply in view of the poorly performing agricultural sector.

On promotion of export, the article has shown that the available opportunities such as the AGOA market have not been sufficiently exploited. However, the efforts of the EPZs Authority to secure international markets of EPZ produced goods have been acknowledged.

6.2 Recommendations

In the view of the discussion and conclusions already made, the following main recommendations are worth making.

On investment incentives, it is recommended that the law be revisited to address pertinent issues regarding fiscal incentives. Fiscal incentives given to EPZ firms should vary from one investor and another depending on the type of business. The incentives should be specific in the sense that, if the business under which the license is issued is common in other countries, incentives may be important for attracting the investors. If the licensed business is very rare in other countries, Tanzania should minimise the package of incentives in the move to balance the costs of running the EPZ scheme and the benefits obtained. This is a dual responsibility on the part of the host state. So, Tanzania should strive to create a balance between the costs of having investors and what she gains from the said investors.

Alternatively, the law may be revisited to provide the constant but moderate tax rate for investors conducting their business in EPZs.

Neither permanent tax holidays to EPZ investors as adopted by Namibia, for example, nor periodic overgenerous tax exemptions as in most of other African countries is a better policy for economic advancement.⁹⁶ A constant tax rate would be imposed throughout the presence of the investor without sliding with any circumstances as it is for some countries such as Botswana.⁹⁷ Such a rate should also be moderate in that it may be different from that imposed on other sectors outside the EPZs, that is, it may be lower than that imposed on non-EPZ investors. All these indicate the importance of non-reliance on fiscal incentives as the only and principal mechanism for economic development because the host state loses in instead of gaining.

This is so because on the one hand, restoring taxes as it is for non-EPZ companies may deter the investors and, therefore, defeat the principal purpose of the scheme, which is to promote exports and create international competitiveness. On the other hand, total removal of duties and taxes for long period like the current position of the law is also not healthy for the economy of a developing country like Tanzania. As already shown, incentives are the last decisive factor for investors in EPZs after serviced land with enabled infrastructure, such as transport and utility. It is recommended that incentives should be reformed. The reason is that incentives are not necessarily and always the first priority of the investors: other priorities, such as serviced land and utility come first. . The incentives reform, therefore, does not stand to necessarily affect the investors' decision to invest in the zones. The cost of running business is reduced through other mechanisms such as well enhanced transport and utility.

⁹⁶ Rolfe, Woodward and Kagira, *Footloose and Tax Free: Incentive Preferences in Kenyan Export Processing Zones*, above note 19, at p. 796.

⁹⁷Ibid.

The issue of transparency in administration of fiscal incentives is also important. Incentives in Tanzania are provided in tax laws and the law regulating EPZs. Provision of fiscal incentives through multiple statutes is not a very good practice, for they may easily be abused by unethical officers. Also, the law does not provide for periodic review for establishing the forces behind the provision of these incentives in the manner they are provided and the aftermaths after a certain period. This helps in deciding if the government should continue giving the incentives to EPZ firms or not. It is recommended that all incentives available for EPZ firms should be published in one brochure. This will enhance transparency in administering the available incentives and enable those investors to know which incentives are available if at all they are intrigued in them.

On the use of local raw materials, the aspect of using locally produced raw materials should be addressed. The law should provide for the use of domestic raw materials in the EPZs as a compulsory requirement before considering their importation from other countries. However, for easy implementation of the law, it is imperative to develop other sectors outside EPZ scheme. For example, the focus should be on the agricultural sector. The sector should be treated as a real backbone of the economy because it is shown that many Tanzanians depend on it to survive. Most of activities in EPZs deal with apparel production. The most relevant raw material in these industries is cotton. It follows that, if the cotton farmers are enabled to produce quality cotton that can ably secure the market in EPZs, the farmers will benefit from the scheme and the investors as well through programmes such as AGOA in which there is a duty-free importation of apparel into USA market.

Further, on employment opportunities in EPZs, it is recommended that on jobs creation in the EPZs, the law should provide a way through which payments to the local employees can make employments meaningful. The law may provide room in which EPZs Authority can enter into legally binding agreement with the investor prior to licensing process, on the mode of paying the locals employed by EPZ firms. The agreement should cover the amount paid to the local employees not to be less than the minimum wage in Tanzania. This will make the jobs created meaningful and, therefore, avoid the frequent disputes over low salaries by EPZ firms.