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EPZs: Export Processing Zones or Exploiting People Zones?

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“Out of sight, out of mind, too afraid of the horror you might find.”

Abstract

Spesso si sente dire “il lavoro nobilita l’uomo”. Ma è sempre così? Questa tesi vuole gettare luce su un fenomeno tanto diffuso a livello globale quanto – deliberatamente – ignorato: le zone franche industriali.

Le zone franche industriali sono aree governate da normative speciali, stabilite soprattutto in paesi in via di sviluppo, al fine di promuovere una crescita dell’economia nazionale trainata dalle esportazioni. In altre parole, le *export processing zones* sono delle zone industriali che godono di incentivi straordinari (sia legislativi che sociali) istituite con lo scopo di attrarre investitori stranieri, e in cui i materiali importati subiscono un certo grado di lavorazione prima di essere esportati.

Queste zone hanno visto una crescita vertiginosa sia nel proprio numero sia in quello dei paesi che le ospitano, così come si sono notevolmente evolute in termini di dimensioni e settori operativi. Sono un fenomeno che si è sviluppato così rapidamente e, in alcuni casi, in maniera così incontrollata, che non ha seguito un processo di crescita, per così dire, omogeneo, bensì ha dato vita ad una molteplicità di fattispecie che hanno reso ancora più difficile organizzare un vero e proprio studio sistematico, tanto è vero che c’è chi è arrivato a contare ben 32 definizioni diverse per indicare le zone franche industriali. Oggi le stime più recenti indicano la presenza di ben 3.500 *export processing zones* in tutto il mondo, le quali danno lavoro a 66 milioni di

lavoratori e muovono uno scambio economico complessivo di circa 500 miliardi di dollari. Eppure, non se ne sente molto parlare.

Ma perché occuparsene? C'è un aneddoto che fa al caso nostro. Nel 1978, quando in Cina Deng Xiaoping si apprestava ad avviare quella fase nota come “la seconda rivoluzione”, annunciò che le zone economiche speciali e le cosiddette “città aperte” avrebbero agito come “finestre sull'economia globale”, aggiungendo – ed è questo il punto per noi rilevante – che in tali zone lo sfruttamento sarebbe stato tollerato. Ed in effetti la tolleranza è stata così ampia che si potrebbe dire, per rimanere nella metafora di Deng Xiaoping, che le finestre, più che aprirsi, si sono spalancate.

Il problema è che il fenomeno delle zone industriali di esportazione è stato e continua ad essere esclusivo appannaggio degli “addetti ai lavori”, con l'opinione pubblica deliberatamente tenuta all'oscuro. La violazione di diritti umani, chiaramente, non è mai una bella pubblicità. Solo il successo commerciale di “No Logo” della scrittrice canadese Naomi Klein è riuscito, verso i primi anni 2000, ad aprire un dibattito al di fuori del mondo accademico-istituzionale in merito alle implicazioni che le *export processing zones* hanno sul rispetto dei diritti dei lavoratori.

Ma l'impatto che queste zone hanno sui diritti umani va ben oltre le questioni legate al lavoro. Laddove i progetti di zone franche industriali attraggono un gran numero di lavoratori immigrati, la disponibilità di servizi essenziali quali alloggio, acqua, elettricità, servizi sanitari ed educativi, può non tenere il passo con la domanda. Un flusso

sostenuto di lavoratori immigrati può altresì portare ad una rapida introduzione e diffusione di malattie infettive, con inevitabili conseguenze in materia di diritto alla salute. Inoltre, le vaste dimensioni nella struttura fisica di alcuni progetti di zona può causare notevoli disagi per le comunità locali durante la fase di costruzione iniziale e non solo. Il diritto alla vita ed alla salute delle persone che vivono e lavorano in prossimità di queste zone possono anche essere seriamente influenzati da eventuali danni ambientali causati dall'attività economica della *export processing zone*. Così come comincia ad esserci anche qualche evidenza di problematiche emergenti in materia di diritti umani connesse alla tendenza verso la gestione privata ed il funzionamento di tali zone.

Dunque, sapere e non agire apre inevitabilmente una questione morale. Non divulgare informazioni su queste oscure realtà quando se ne è in possesso significa essere complici di un sistema che, al contrario, va necessariamente cambiato: il lavoro non è una merce e l'uomo non è un mezzo. Nell'introduzione a questa tesi è scritto a chiare lettere che studiare Relazioni Internazionali non può limitarsi ad essere un'attività fine a se stessa, ma comporta delle responsabilità ben precise nei confronti del prossimo. Ed ecco perché la scelta di questo argomento. Si parla di responsabilità sociale d'impresa, quindi non è forse giunto il tempo di parlare anche di "responsabilità sociale di studio"?

L'impianto della tesi è semplice ma funzionale al suo obiettivo: comprendere il fenomeno, analizzarlo, porlo in una prospettiva futura. Tre, pertanto, sono i capitoli: il primo indaga sul come e sul perché sia

nato il concetto di *export processing zone*, illustra come queste zone operino, offre una panoramica delle variazioni sul tema di zona franca industriale e affronta il problema legato alla ricerca di una definizione univoca di zona franca di esportazione; il secondo capitolo, poi, affronta il lato oscuro di questo concetto, che come formula di insuccesso ha spesso puntato sulla violazione dei diritti dei lavoratori; il terzo capitolo, infine, è dedicato ad uno studio di caso molto particolare, ovvero la zona economica speciale di Luanda-Bengo, assolutamente interessante e stimolante per il tipo di situazione in cui si è venuta a creare e per la strada che potrebbe segnare.

Nonostante i grandi limiti di ricerca in questo campo dettati da una scarsissima possibilità di reperire dati consistenti e, soprattutto, aggiornati, si è cercato di basare la propria ricerca su una varietà di fonti tale da garantire una visione che fosse il più possibile completa. Tuttavia, questo mette in luce come oggi più che mai sia necessario uno sforzo coordinato di natura inter-istituzionale e multidisciplinare rivolto ad affrontare una volta per tutte questa grande incognita della globalizzazione. Si tratta di una richiesta urgente, che non può più essere disattesa, pena potenziali scenari per niente auspicabili.

Sembra opportuno concludere segnalando che il presente lavoro non vuole soltanto essere l'atto conclusivo di un corso di laurea, bensì l'inizio di un progetto di ricerca e approfondimento che possa continuare e svilupparsi nel tempo, con l'obiettivo certamente ambizioso - ma mai slegato da un giusto senso di umiltà - di poter contribuire concretamente all'indagine di un fenomeno che, purtroppo, rimane ancora avvolto nell'oscurità.

Contents

| | |
|----------------------------------|------|
| Abstract..... | p.2 |
| <i>Abbreviations</i> | p.8 |
| <i>Introduction</i> | p.10 |

Chapter one: On Export Processing Zones

| | |
|--|------|
| 1.1 Historical overview..... | p.14 |
| 1.1.2 Structural changes in global economic development..... | p.19 |
| 1.2 New production sites..... | p.25 |
| 1.3.1 How EPZs operate..... | p.29 |
| 1.3.2 A classic example of zone-operating country: the Dominican Republic..... | p.31 |
| 1.4 Alterations..... | p.37 |
| 1.4.1 Mexico: Maquiladoras..... | p.37 |
| 1.4.2 Bangladesh: Bonded warehouses..... | p.41 |
| 1.4.3 China: SEZs..... | p.44 |
| 1.5 The challenge of definition(s) | p.47 |

Chapter two: The Dark Side of EPZs: Greed is good

| | |
|---|------|
| 2.1 Exploiting a perfect system of exploitations..... | p.52 |
| 2.2 “Greed is good” | p.55 |
| 2.3 Wages..... | p.60 |
| 2.4 Women at work. | p.64 |
| 2.5 “Do not listen to agitators and trouble makers” | p.75 |
| 2.6 Working time, health and safety..... | p.83 |
| 2.7 Obstacles..... | p.84 |

| | |
|---|------|
| 2.8 Moralised business: Greed is bad..... | p.85 |
|---|------|

Chapter three: Case study: Angola’s ZEE Luanda-Bengo E.P.: The Game-changer?

| | |
|---|-------|
| 3.1 EPZs in Africa..... | p.88 |
| 3.2 Africa’s happiest country..... | p.92 |
| 3.3 The keyword is “diversification”..... | p.97 |
| 3.4 Why the SEZ typology? | p.98 |
| 3.4.1 Decreto n.º 50/09 de 11 de Setembro e Decreto n.º 57/09 de 13 de Otubro: “Uma empresa pública de grande dimensão”..... | p.101 |
| 3.4.2 Decreto Presidencial n.º 49/11 de 9 de Março: Regime Jurídico da Zona Económica Especial Luanda-Bengo E.P.. | p.113 |
| 3.4.3 Lei do Investimento Privado n.º 20/11 de 20 de Maio. | p.120 |
| 3.5 Angola, the game-changer? | p.125 |
| Conclusions | p.131 |
| <i>Bibliography</i> | p.137 |

Abbreviations

- ACET** (African Center for Economic Transformation)
- AGOA** (African Growth and Opportunity Act)
- AMRC** (Asia Monitor Resource Center Ltd.)
- BEPZA** (Bangladesh Export Processing Zone Authority)
- CEACR** (Committee of Experts on the Application of Conventions and Recommendations)
- CIF** (China International Fund)
- CLS** (Core Labour Standards)
- CSR** (Corporate Social Responsibility)
- EBA** (Everything But Arms initiative)
- EPZ** (Export Processing Zone)
- EU** (European Union)
- FDI** (Foreign Direct Investments)
- GDP** (Gross Domestic Product)
- HDI** (Human Development Index)
- ICFTU** (International Confederation of Free Trade Unions)
- ITUC** (International Trade Unions Confederation)
- IMF** (International Monetary Fund)
- LDC** (Least Developed Country)
- MFA** (Multi-fibre Arrangement)
- MNE** (Multinational Enterprise)
- NIC** (Newly Industrialised Country)
- SFADCO** (Shannon Free Airport Development Company Limited)
- UNCTAD** (United Nations Conference on Trade And Development)
- UNCTC** (United Nations Centre on Transnational Corporations)

ZEE (Zona Económica Especial Luanda-Bengo E.P.)

WB (World Bank)

WEPZA (World Economic Processing Zones Association)

Introduction

On 21-23 October 2013 Dubai will host the 3rd *Global Free Trade and Special Economic Zones Summit* under the motto “Joining the chain between Governments – FDI – Investors – Manufacturers – Locations”. This – the official website underscores – is the leading international event dedicated to the *strategic development of nations* through trade and industry. And that is right, indeed. As the present dissertation demonstrates, the concept of *export processing zone* revolves around both an imposed and desperate need for socio-economic development that did not take much time to leave behind its social goal and deformed itself into pure obsession for that *strategic development* that we may simply call *profit*. In fact, if one pays just a little bit of attention to said catchphrase, he/she shall notice that there is not any mention to the people employed in such zones, which sounds quite sinister if we think that the most recent official estimates available (2007) account for some 66 million workers worldwide (and provided that there are enough reasons to believe that the growth trend is stable, as of today, they are even likely to be even more). Are these labourers ghosts? Why are not they even taken into consideration in that motto?

The truth is that instead of being the final – or, at least, regarded among the final – beneficiaries of an export processing zone main objectives, zone workers have only been considered as a mere, yet essential, instrument to reach that longed mirage of wealth. By whom? Of course, by the recipients of the *Global Free Trade and Special Economic Zones Summit* themselves, that is, governments, foreign direct investments, investors, manufacturers and locations. Therefore, scrolling down the list of speakers faculty, it shall be not much of a surprise to see, for instance, presidents, heads, general secretaries,

ministries and executive directors of governments, banks, UNCTAD, OECD, zone authorities, private investment funds, and so on, but not a single representative of some kind of organisation involved in the tutelage of workers' rights. As if it were not enough, considering the previous editions of the world summit, mouths will not be keen to inform on its outcomes once it is over. Well, in general terms, this aspect does not have to surprise either. There is a widespread, suspicious silence in matter of export processing zones. It is not an easy task to find comprehensive and updated data, studies and documents on such phenomenon. Why is that? Is there something to hide? Moreover, there has never been a call for a concerted effort that attempted to fully understand this reality. As evidence of this, up to date, there is not one single, globally accepted definition of *export processing zone*. Most of all, what has the International Labour Organisation been doing? Why no Tripartite discussion on the formulation of appropriate strategies to ensure that supply chains and export processing zones promote decent work has taken place since 1998?

People tend to maximise. They want to survive and improve life for self, offspring, family, community, nation, country, and world, but not equally. Think in terms of concentric social circles around a person; the closer someone is to this centre, the stronger the kinship and sense of shared future, and the greater the inclination to modify actions for some other's benefit. Ultimately, one's level of dedication differs across the spectrum for self and for others. If one decides to study International Relations, then he/she must know that great responsibility comes with it. Ludwig von Mises wrote, "Human action is purposeful behaviour. Or we may say: Action is will put into operation and transformed into an agency, is aiming at ends and goals, is the ego's meaningful response to stimuli and to the conditions of its

environment, is a person's conscious adjustment to the state of the universe that determines his life". (*Human Action: A Treatise on Economics*, 1949) Hence, the author of the present dissertation firmly believes that we ought to stop living so subserviently, accepting as normal everything that we are told, everything that we are forced to see. There is a line in a song that goes, "out of sight, out mind, too afraid of the horror you might find". Well, it is hard to admit it, but we have to face it once and for all: this is the attitude of the Western world's average spoiled citizen, who takes for granted the fact that we do prosper. If *export processing zones* in more than a case have degenerated into *exploiting people zones*, the cause of the latter is to be reconnected also to that very behaviour.

Given the impressive amount of more than 3.500 zones worldwide, a number of generalisations will necessarily be made throughout this dissertation. For this very reason, however, it is fundamental to the author to stress two very precise aspects that acted as his lodestar during the realisation of his work. Firstly, he does not want to give the impression that the nature of export processing zones and workers' experiences are the same all over the world. Secondly and accordingly, he also believes that it should be adopted a more critical approach to the argument that since each country has its own national conditions, then the experience of other countries is of scarce, if not of absolute, irrelevance. Quite the opposite! It is precisely because of this argument, which deliberately ignores the common features and problems of *export processing zones*, that workers, trade unions and non-governmental organisations in general, have often found themselves isolated, neglected, abandoned. This dissertation is dedicated to all of them.

Vorrei da subito ringraziare la Prof.ssa Vania Brino per avermi seguito con grande professionalità, disponibilità e pazienza durante tutta la stesura della tesi, dimostrando fiducia nei confronti miei e di questo lavoro anche nei momenti più difficili. E' su persone come lei che l'università italiana ha il dovere di puntare se vuole garantire un percorso formativo di qualità e valore ai propri studenti.

Ringrazio, inoltre, l'Ambasciata d'Italia a Luanda per il materiale che mi è stato gentilmente fornito, senza il quale non sarebbe stata possibile la realizzazione del terzo, fondamentale capitolo del presente elaborato.

Chapter One: On Export Processing Zones

CONTENTS: 1.1 Historical overview. – 1.1.2 Structural changes in global economic development. – 1.2 New production sites. – 1.3.1 How EPZs operate. – 1.3.2 A classic example of zone-operating country: the Dominican Republic. – 1.4 Alterations – 1.4.1 Mexico: Maquiladoras – 1.4.2 Bangladesh: Bonded warehouses – 1.4.3 China: SEZs – 1.5 The challenge of definition(s)

Free zones have existed for centuries. They are an age-old concept that was put into practice, for instance, through the free trade posts of the Roman Empire, the free cities of the Middle Ages (to get an idea of their success, it is sufficient to search on a map how many cities in Italy alone are called “Castelfranco”), and the free ports of the British Empire (e.g. Gibraltar, Hong Kong, or Singapore). Such zones were to be found along existing trade routes and served as a strategic point entrusted with the task to deal with the storage, trans-shipment and re-export of goods produced elsewhere. However, as it shall be seen below, the modern concept of *export processing zone* go one step further.

1.1 Historical overview.

The modern concept of *export processing zone* (EPZ) saw the light in 1959, when the Irish Parliament passed the *Shannon Free Airport Development*

Company Limited Act,⁽¹⁾ which gave institutional birth to the Shannon Free Airport Development Company Ltd. (SFADCO), the world's first duty-free manufacturing zone in modern times.

The reason that pushed for such a provision to be taken was as simple as dramatic: with the advent of long-range jet airliners at the end of the 1950s, in just a few years the Shannon Airport might have suffered a vertiginous decline in its potential traffic lines. Not least, the country's population was undergoing a process of massive emigration.⁽²⁾ To say it in the words of J.F. Kennedy, "most countries send out oil or iron, steel or gold, or some other crop, but Ireland has had only one export and that is *its people*".⁽³⁾ Therefore, the Parliament devised two strategies: encouraging tourism from North America; and, on the other hand, constructing an industrial estate located in the surroundings of the airport, in order to boost foreign manufacturers to establish plants that would use the airport's freight facilities for the import of components and semi-finished goods as well as for the export of their finished products.⁽⁴⁾ In other words, the Parliament tried to safeguard the future of SFADCO by guaranteeing a good deal of both passengers and services, and,

⁽¹⁾ See 'Shannon Free Airport Development Company Limited Act', Number 36 of 1959, consulted at <<http://www.irishstatutebook.ie/1959/en/act/pub/0036/index.html>>.

⁽²⁾ "Only two European countries experienced a fall in population during the 1950s: Ireland and East Germany. Their common fate was noted in August 1961 when the preliminary results of the 1961 Irish census were published, just days after the East German government sealed off the crossings between East and West Berlin and began to erect the Berlin wall to prevent the flow of emigrants to the West. Under the headline "Fleeing Irish and East Germans", the *Belfast Telegraph* reminded readers that the flow of refugees from East Germany, which prompted Walter Ulbricht (the East German leader) to seek Russian help, was less than the number who emigrated from the Irish Republic every year. Adopting a slightly more sympathetic tone, *The Irish Times* commented that 'it is agreed that Ireland, apart from East Berlin, has to endure the greatest pressure and attractions to induce people to leave their own country'." Daly M.E., *The Slow Failure: Population Decline and Independent Ireland, 1920-1973*, Wisconsin (USA), The University of Wisconsin Press, 2006, p.183.

⁽³⁾ Kennedy J.F., Remarks at the City Hall in Cork, 28 June 1983, as consulted at <http://www.jfklink.com/speeches/jfk/publicpapers/1963/jfk277_63.html>.

⁽⁴⁾ <<http://unctc.unctad.org/data/e90iaa27q.pdf>>.

at the same time, it aimed at a solid economic growth in the Shannon region through sound industrial development.

Unlike the very first prototypes of EPZ authorities that would develop elsewhere in the world, the SFADCO project went far beyond the creation, promotion, and operation of an EPZ: in addition to promoting industrial employment in the surroundings and developing the airport by means of tourism and trade, SFADCO was conceived to take over the reins of the Shannon region by acting as a real regional development agency.

As the first country to set up an EPZ, it is safe to say that the Emerald Isle played a pioneering role in the ensuing impressive diffusion of this concept to other countries. However, it is interesting to note that such “invention” was not imported by the more industrialised countries of Western Europe and North America, but was welcomed by the newly industrialising countries of Asia (NICs), where zones underwent - in many cases – a process of almost natural evolution from the original free ports that were previously established during the colonial era in order to promote *entrepôt*-trade.⁽⁵⁾ By the end of the 1960s, there were about ten countries worldwide with at least one “Shannon style” EPZ. Most of them were in Asia (Taiwan, Singapore, Hong Kong, and India), but they could also be found in Latin America (Mexico, Colombia, and the Dominican Republic).

As *Tab. 1* shows, the phenomenon of EPZ began to gather momentum by the mid-1970s: in 1975, there were 79 zones set up in 25 countries; then, the rapid growth in the number of zones continued for the rest of the decade and in the following 1980s, so that between 1975 and 1986, employment in the

⁽⁵⁾ Maex R., *Employment and multinationals in Asian export processing zones*, Multinational Enterprises Programme, Working Paper No.26, Research of Employment Effects of Multinational Enterprises. Geneva, ILO, 1983, p. 15.

zones grew at an average rate of 9 per cent per year, whilst exports grew at an impressive 15 per cent per year.⁽⁶⁾ From 1986 to 1997, the number of EPZs exploded at an overall growth rate of 380 per cent, and between 1997 and 2002 – which, it is worth noting, is a period of time exactly half compared to the previous two taken into consideration – the EPZs rocketed from 845 to 3000. With recent estimates counting approximately 3500 EPZs in at least 130 countries, the following figures might make some head spin: in thirty years (1975-2006) the world-wide number of EPZs grew by 4300 per cent, and in a single decade (1997-2006) the total number of employment increased threefold, reaching a count no less than 66 million.

Table 1 - Estimates of the development of EPZs

| Years | 1975 | 1986 | 1997 | 2002 | 2006 |
|--|------|------|------|-------|-------|
| Number of countries with EPZs | 25 | 47 | 93 | 116 | 130 |
| Number of EPZs or similar types of zones | 79 | 176 | 845 | 3 000 | 3 500 |
| Employment (millions) | n.a. | n.a. | 22.5 | 43 | 66 |

Source: adapted from Singa Boyenge (2007).⁽⁷⁾















Speaking of the core of the EPZs, namely the employees, a further analysis of the of the available data (see *Tab. 2* below) reveals that Asia and Central America are at the first places for employment generation. It is immediately clear that the lion's share is up to China, where some 40 million are employed. Nonetheless, the rest of Asia accounts for a remarkable 15 million and, in addition, some other 3.250.000 workers are employed in bonded

⁽⁶⁾ ILO/UNCTC, *Economic and Social Effects of Multinational Enterprises in Export Processing Zones*. Geneva, ILO, 1988, p. v (preface).

⁽⁷⁾ Singa Boyenge J.P., *ILO database on export processing zones (Revised)*. Geneva, ILO, 2007, p.1.

warehouses in Bangladesh under EPZ-like conditions without being in an “actual” zone.

Table 2 – Estimates of the employment in EPZs

| Geographical area | Employment | Number of zones |
|---|--|-----------------|
| Asia |  55 741 147 | |
| - of which China | (40 000 000) | 900+ |
| - of which bonded factories in Bangladesh | (3 250 000) | |
| Central America and Mexico |  5 252 216 | 155 |
| Middle East |  1 043 597 | 50 |
| North Africa |  643 152 | 65 |
| Sub-Saharan Africa |  860 474 | 90+ |
| United States |  340 000 | 713 |
| South America |  459 825 | 43 |
| Transition economies |  1 400 379 | 400 |
| Caribbean |  546 513 | 250 |
| Indian Ocean |  182 712 | 1 |
| Europe |  364 818 | 50 |
| Pacific |  145 930 | 14 |
| Total (estimated) | 65 980 763 | 3 500+ |
| |  = approximately 100 000 | |
| |  or † = approximately 1 000 000 | |

Source: adapted from Singa Boyenge (2007).⁽⁸⁾

⁽⁸⁾ *Ibid.*, p. 2.

In Central America (notably Mexico) there are about 5 million workers employed in EPZs and it would not seem inappropriate to put such figure on aggregate with the more than half a million workers of the zones in the Caribbean.

The African EPZs count almost one million and a half workers, whereas the concept of EPZ does not really appear to have taken root in South America. On the Northern side, the US free trade zones have been set up mostly to facilitate the imports of parts for assembly. Finally, the EPZs in the transition economies of Central and Eastern Europe (that account for almost one million and a half workers) will hardly endure – at least, in their current structure – through the process of expansion of the European Union.

1.1.2 Structural changes in global economic development.

The figures analysed above demonstrate that whether one observes the phenomenon of the EPZs from the point of view of the rate of growth, or the number of endorsers, or the rate of diffusion, he/she cannot but deem them to be highly successful – highly successful for what reasons and, most of all, for the benefit/detriment of whom will be discussed in the next chapter. Said success of EPZs is part of the much broader context of structural changes in global economic development that took place during the 1970s and 1980s. Therefore, it may be useful to clarify what factors brought to such an extraordinary diffusion of the EPZ idea in the developing world in order to set the stage for the present study.

To begin with, despite marked national and regional differences as well as variations in the pace change,⁽⁹⁾ these two decades saw a truly remarkable expansion of the presence of the developing countries in the global market both in terms of manufacturing production and manufactured exports. This is proved by the fact that the developing countries' share of global value-added in the manufacturing industry rose from 8.76 per cent to 10.61 per cent compared with a significant decrease from 72.15 per cent to 65.21 per cent over the same period (1973-1981) for the Western industrialised countries.⁽¹⁰⁾ In 1981, some individual developing countries such as India, the Republic of Korea, Brazil and Mexico accounted for a larger share of global value-added in manufacturing than many traditional industrial countries. For instance, Brazil's manufacturing output managed to exceed that of the United Kingdom: whilst Brazil's share of global value-added in manufacturing rose from 1.99 per cent to 2.41 per cent in the lapse of time between 1973 and 1981, that of the United Kingdom fell from 4.18 per cent to 2.37 per cent.⁽¹¹⁾ As a consequence, the share of value-added in manufacturing in total developing country Gross Domestic Product (GDP) rose slightly between the 1970s and the early 1980s, compared with a slightly more marked shift in the opposite direction in the industrialised countries, so that in a number of developing countries the contribution of value-added in manufacture to GDP managed to reach that of many Western industrialised countries.

⁽⁹⁾ "To take just one example, whereas the average rate of growth of the manufacturing industry was almost equal for developing America and developing Asia during the 1970s (6.5 per cent per year compared with 7.4 per cent per year), a vast difference opened up in the 1980s (-0,9 per cent per year as compared with +8,7 per cent per year for 1980-84)." Kreye O., Heinrichs J., and Fröbel F., *Export processing zones in developing countries: Results of a new survey*, Multinational Enterprises Programme, Working Paper No. 43. Geneva, ILO, 1987, p. 1.

⁽¹⁰⁾ Table based on "Handbook of industrial statistics, 1984", New York, UNIDO, 1985, as reported in *ibid.*, p.2.

⁽¹¹⁾ *Ibid.*

As has been mentioned, not only increased manufacturing production, but manufactured exports raised, too. After decades of moderate decline, exports of manufactures originating in the developing countries began to rise in the late 1960s, insomuch as the developing countries' share of world exports of manufactures triplicated between 1965 and 1984 (from 4,6 per cent in 1965 to 13.1 per cent in 1984).⁽¹²⁾ In 1984, almost half of world clothing exports (47.6 per cent) and more than a quarter of world textile exports (27 per cent) were supplied by developing countries.⁽¹³⁾ This is the evident proof that the developing countries' export performance in this essential area of manufactured goods had reached sensational levels in just two decades. Notwithstanding, developing countries' manufactured exports were heavily concentrated on a few countries.

Manufactures accounted for a higher percentage of developing country exports than primary products, therefore the image of a "Third World" predominantly as a supplier of raw materials was no longer in accord with reality. And EPZs represented the most exemplary case of this type of export-oriented production, given that a high percentage of manufactured goods consisted of the products of offshore assembly or semi-manufacture with very weak forward linkages within local or other developing economies – and this is why still today the advancing industrialisation in developing countries requires some qualification.

Such a "miracle", as some called it, was possible because some developing countries favoured the creation of a free trade economy basically along the lines of comparative advantage instead of insisting with a policy of import substitution, i.e. by inward-looking industrialisation disconnected from

⁽¹²⁾ *Ibid.*, p. 4.

⁽¹³⁾ *Ibid.* p. 4.

foreign markets (that included a related series of interventions such as import restrictions, tariffs, subsidies and overvalued exchange rates, to name a few).⁽¹⁴⁾ The United Nations Conference on Trade and Development (UNCTAD) held in Geneva in the spring of 1964, with the intent to take “the first steps towards the establishment of a new trade policy for development”,⁽¹⁵⁾ stressed that:

“Industrialization based on import substitution has certainly been of great assistance in raising income in those developing countries, but it has done so to a much lesser extent than would have been the case had there been a rational policy judiciously combining import substitution with industrial exports.”⁽¹⁶⁾

It is essential to underline that UNCTAD - together with the United Nations Development Organization (UNIDO) - was one of the engines that pushed for the structural changes mentioned above, and that both directly and indirectly put much effort into legitimising the concept of EPZs through a

⁽¹⁴⁾ “A variety of fiscal and other incentives could also be provided. The granting of tax advantages, special treatment in the allocation of import licences or export bonuses, favourable transport rates and many other incentives could help to promote the achievement of adequate export goals. Experience along these lines in the industrially developed countries should be studied with a view to drawing the necessary lessons for developing countries. In addition to these incentives, the developing countries should eliminate certain obstacles which result from their own policies. We have referred elsewhere to monetary overvaluation of a structural nature. But there is another kind of overvaluation which is the result of a process of suppressed inflation: internal costs rise the exchange rate is artificially maintained. In some developing countries, this has seriously discouraged exports and at the same time stimulated imports, thus aggravating the tendency towards a trade deficit. There is often also a series of administrative obstacles hindering exports. All this should therefore be revised.” “Proceedings of the United Nations Conference on *Trade and Development*, Geneva, 23 March-16 June 1964”, Vol. II: Policy Statements. Geneva, United Nations, 1964, p. 41.

⁽¹⁵⁾ *Ibid.*, foreword.

⁽¹⁶⁾ *Ibid.*, p. 14.

number of ensuing studies on the costs, advantages and benefits of such zones. Think that in the foreword to its Proceedings, UNCTAD proudly states how it:

“ (...) ushered in a new chapter in the history of United Nations endeavours to accelerate the economic development of developing countries. The Conference has shown the way towards a more just and rational international economic order in which the poor nations, which make up the great majority of mankind, will at long last be able to have an adequate share in the fruits of economic and technological progress.”⁽¹⁷⁾

Now, it may be quite curious to notice that Thomas Kelleher, one of the entrepreneurs of the Shannon zone, later worked as an adviser to UNIDO, published for said organisation “Handbook on export free zones” (Vienna, UNIDO, 1976), that is, the first manual on how to create an EPZ, and it appears that he even took part in a number of UNIDO advisory missions for the promotion of EPZs in different developing countries.⁽¹⁸⁾ Speaking of UNIDO, it should not go unremarked that it also contributed, in 1978, to the foundation of the World Economic Processing Zones Association (WEPZA). In the wake of the Bretton Woods system, the support and legitimising function of international institutions was consistently backed up by the efforts of the World Bank (WB) and the International Monetary Fund (IMF), and since 1974, by the United Nations Centre on Transnational Corporations (UNCTC), too.

⁽¹⁷⁾ *Ibid.*

⁽¹⁸⁾ ILO/UNCTC, *Economic and Social Effects of Multinational Enterprises in Export Processing Zones*. Geneva, ILO, 1988, p. 3.

Furthermore, the success of the EPZ idea could also be attributed to other important factors, which are nothing but a direct consequence of the circumstances just described. The first factor that could be mentioned is what some called “the EPZ as a planner’s dream”. And it is not difficult to guess why. Transforming a slow-growing economy, pushing old enterprises to innovate or modernise a poorly functioning infrastructure, was something certainly too demanding and scarcely stimulating for international agencies and national planners when compared to the opportunity of building up industrial estates from the scratch in unspoilt territories, with updated modern infrastructures, and without red tape or the traditional social oppositions. Such a friendly environment, which included in its package even low wages, too, immediately attracted foreign investors. Paradoxically, in these modern enclaves everything was organised for the – exclusive – benefit of multinational enterprises (MNEs). Finally, another relevant factor was due to the Multi-fibre Arrangement (MFA): MNEs of the garment industry, indeed, invested in the EPZs also to circumvent trade restrictions by taking advantage of the yet unfilled export quotas attributed to the host countries.

It goes without saying that share of global value-added does not provide any qualitative indication of the level of technical development in manufacturing, its structure and degree of complexity, as well as its capacity for autonomous reproduction and the extent to which industry is accessible to national control. More importantly, an ever-increasing share of global-value added among developing countries is certainly a very encouraging picture, but it does not take into account a *little* detail: the human factor (when it is not intended as a mere supply of labour force, of course). Therefore, regardless of their quantitative significance, it is the paradigmatic character for the production in EPZs that makes the study of such a phenomenon extremely urgent as

compelling. Almost the entirety of the studies conducted on EPZs, indeed, date back to the 1980s and 1990s, and – has it has been stressed last March during the 317th session of the Governing Body of the ILO - even the International Labour Organization had no Tripartite discussion on the promotion of decent work in EPZs since 1998.⁽¹⁹⁾

1.2 New production sites. A process truly worth of the name “development”?

In the light of the foregoing, it appears clearly evident that EPZs in developing countries have specifically been designed with the task of providing the technical, economic and legal framework and preconditions for the profitable use of low-cost labour and other factors of production, such as land, water and the environment in general, not to mention energy and raw materials, for a world market-oriented, internationally competitive production. Such a production, therefore, requires:

- modern and dedicated infrastructure;
- adequate supply of industrial inputs;
- strategic location;
- plentiful and comparatively cheap supply of labour;

⁽¹⁹⁾ ILO, “Draft minutes of the 317th Session of the Governing Body of the International Labour Office”. Geneva, ILO, 2013.

- the revocation of any national restriction on trade and payments that might preclude the free movement of goods and the free transfer of capital and profits.⁽²⁰⁾

With regard to the last point, however, it should be underlined that although in the past this aspect was frequently elected as the core feature of EPZs, exemption from customs duties for imports of raw materials, machinery and semi-manufactures for subsequent processing is only *one* of the many concessions provided by EPZs.

From a reading of dated reports on EPZs, it emerges that since the mid-1980s the standard of provision of both infrastructure and industrial inputs in EPZs has matched – if not even outdone – that offered at comparable locations in the traditional industrial countries. In terms of labour productivity, the Starnberg Institute collected some precious statements released by a number of then federal German industrial representatives that clearly illustrate the situation. The first excerpt is by a German employer, who declared:

“As far as job performance is concerned, my feeling is that this easily matches the level of productivity found in the West Germany after a short period of customisation which is also the norm at home.

I would therefore have to contradict the statistical data on productivity. Given appropriately reasonable management, productivity in Morocco is not, as is often contended, 70-80%. I would stress that productivity is fully the equal of that in the industrialised countries, including West Germany. And eight years’ experience means I’m quite certain on that. It would not be exaggerating to add that productivity often exceeds that level. One example: a seamstress working on an

⁽²⁰⁾ Adapted from Madani D., *A review of the Role and Impact of Export Processing Zones*, World Bank, 1999.

automatic was so skilled and dexterous that the machine couldn't keep up with her and developed a fault because of the speed of operation.”⁽²¹⁾

The Director of *Württembergische Metallfabrik* issued the following statement:

“In Singapore, graceful Chinese girls achieve results working on heavy presses that men would be hard put to match in Germany.”⁽²²⁾

Finally, the *Institut der deutschen Wirtschaft* undertook a study on labour costs and working conditions in South East Asian developing countries, and found that:

“According to individual plant managers of foreign branches, enterprises with identical structures and equally tightly-run management attain levels of productivity entirely equal to that of comparable plants in Germany, if not 10-20% better.”⁽²³⁾

Such considerations, which confirm that labour productivity in EPZs match that of comparable activities at the traditional industrial sites, are of great importance, in that they consequently underline how differences in wages between developed and developing countries cannot be justified by the – wrong – assumption that low-wage countries are not used as sites for

⁽²¹⁾ Rudnick J., *Erfahrungen eines deutschen Unternehmens bei Realisierung einer re-exportorientierten Direktinvestition in Marokko*, in “Internationale Afrikaforum, Vol. 20, No. 2, 1984, pp. 173-176, as quoted in *Export processing zones in developing countries: Results of a new survey*, p. 18.

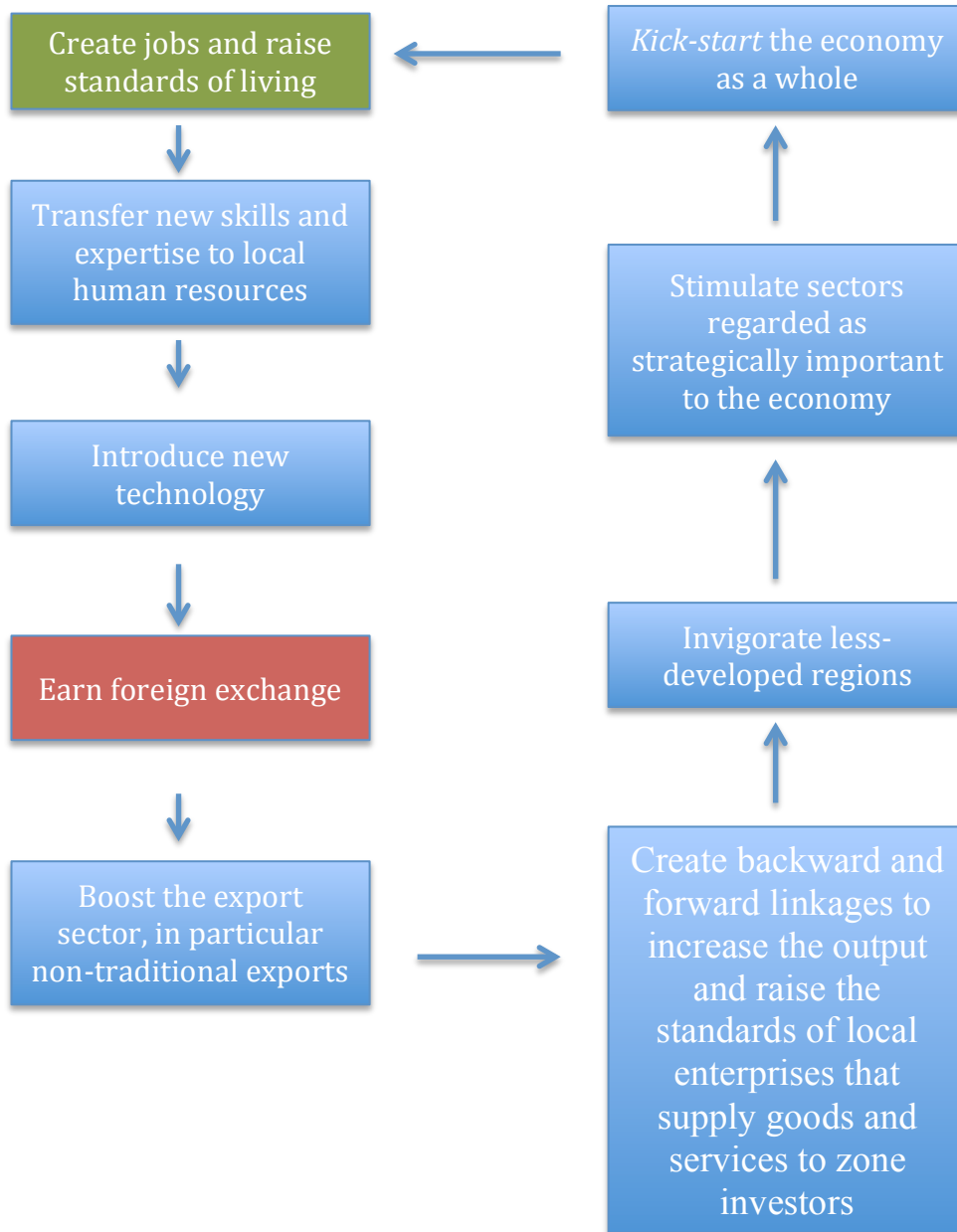
⁽²²⁾ Singapore Economic Development Board/Industrie- und Handelskammer Mittlerer Neckar, “Documentation über den Singapur-Wirtschaftstag in Stuttgart”, 23 Feb. 1983, pp. 34-35, as quoted in *ibid.*

⁽²³⁾ Salowsky H., “Arbeitskosten in Fernost (Beiträge zur Wirtschafts- und Sozialpolitik des Instituts der Deutschen Wirtschaft)”, Cologne, 1985, as quoted in *ibid.*

manufacturing also on cost grounds. In other words, differences in wages are definitely not offset by a lower productivity and those who argue that are in bad faith. The need and desire to attract producers to their sites has dramatically led many developing countries to seek to outbid each other in the scale and nature of incentives, with the result of getting involved in the so-called “race to the bottom”. Speaking of labour productivity, for instance, many studies already in the 1980s highlighted how annual, weekly and daily working times in the EPZs are generally longer than those in the industrialised countries (to take an example, in 1985, Neundörfer reported that the annual equipment operating times in South East Asian textile industry amounted to 8.400 hours compared to the average 5.500 hours in Federal Germany). The major difficulty in trying to explain this stems from the fact that the conventional socio-cultural and macro-economic tools used for explaining the processes of international industrial specialisation are quite simply totally unadapt to the analysis of a phenomenon characterised both by its extraordinarily rapid growth and by what might be viewed as its complete artificiality.

Scheme 1 tries to explain the reasons behind the setting-up of an EPZ. The purposes are all connected to each other and they form an ideal, virtuous circle that starts and ends with the purpose to create jobs and raise the standards of living. However, the very primary objective is always to attract investment and gain foreign exchange, which would otherwise not materialise. In order to understand how they do it, then it may be useful to have a close look at how they operate.

Scheme 1: Why establish an EPZ?



Source: author's interpretation of "Labour and social issues relating to export processing zones", Geneva, ILO, 1998, p. 4.

1.3.1 How do EPZs operate?

Reports on EPZs conducted by the ILO demonstrate that there are common features in the patterns of operation as well as variations on the theme.

Generally, a government agency is responsible for the promotion of investment (*see* points above at p. 13), whilst the zones are normally administered by a zone authority. The latter has offices at national and zone level, which usually contain a number of specialised departments, including a department for labour relations. The involvement of other government departments in zone administration varies to a great extent. Of course, customs authorities are always directly involved on account of the duty concessions in force, but apart from that, in many countries the zone authority is largely self-sufficient, resorting only occasionally on other departments such as the department of labour. Nevertheless, sometimes the cooperation may extend beyond labour, arriving to involve agencies responsible for welfare, social and women's affairs. Instead of dealing with a multitude of offices that would just hinder the inflow of potential investments, the zone authority typically allows investors to deal with just one central office where it is possible to obtain the approvals and complete the procedures required to start business (e.g., the "one window same day service" in Bangladesh).

As for investors in the zones, they are often organised into manufacturers' associations depending on their sector of activity, like garments or electronics, and according to their country of origin. In addition, the sectoral associations may set up subcommittees entrusted with the task of dealing with issues such as human resources.

From a structural point of view, an EPZ is like any other industrial estate or park. The controversy stems from the fact that EPZs more than often are provided with better facilities than those available in the domestic economy. Outside the zone, indeed, the infrastructure is generally not as well built and updated as it is, instead, inside the zone, where factory premises are comparable to those of industrialised countries and, therefore, effectively appropriate to the activity conducted. This may be explained by the

development of zones managed by private entities undergone in the late 1980s. Indeed, private zones have proven to offer better services than “classic” zones typically set up and run by the host government, even through the provision of amenities such as on-site canteens, health services and day cares that, by the enhancement of the employees’ work and living standard, it improves their productivity whilst reducing absenteeism and labour turnover. Therefore, in countries where the development of private parks is encouraged, it appears that the disparity between the conditions inside and outside the zone is often dramatic.

Although zones are normally fenced off for customs and security concerns, host countries have increasingly offered zone privileges to stand-alone plants, so that many zones are not actually bounded within fences. In China, for instance, zones get to be the size of entire cities and resemble any other modern business complex.

1.3.2 A classic example of zone-operating country: the Dominican Republic.

A classic example of zone-operating country is represented by the Dominican Republic. It was colonised first by Spain and then invaded and occupied by the United States twice, precisely from 1916 to 1924 and again in 1965. As Aviva Chomsky pointed out, the first US occupation caused massive dispossession and transfer of Dominican land into the hands of US-owned sugar plantations; the second brought about the so-called “neo-colonialism”, whereby the governments of poor countries are forced to create low-wage, low-tax, low-regulation environments for the benefit of – mostly –US

corporations.⁽²⁴⁾ This aspect is of great importance to fully understand the *actual* reasons that brought the Dominican Republic to pass the *Ley No. 4315* of 22 October 1955, which had the purpose to introduce and promote the establishment of free trade zones:

“Considerando: Que es de interés para la República Dominicana promover su comercio exterior, estimular el tráfico internacional de bienes en general facilitando la manipulación de mercancías de todas clases destinadas a ser almacenadas, exhibidas, procesadas, manufacturadas, re-exportadas y transbordadas, así como ofrecer un refugio para el capital internacional proveyendo facilidades para el depósito de metales y minerales preciosos que puedan ser importados y exportados libremente sin restricciones de ninguna clase, alentar el comercio turístico de la República ofreciendo a los visitantes y viajeros la oportunidad de adquirir, libres de derechos e impuestos de importación, mercancías de todas clases del exterior, especialmente artículos de lujo, para ser consumidas fuera del territorio nacional.”⁽²⁵⁾

In 1969, the MNE Gulf and Western Americas Corporation established in the city of La Romana what the *Consejo Nacional de Zonas Francas de Exportación* (CNZFE) considers to be the first Dominican EPZ.⁽²⁶⁾ It is no coincidence that the development and administration of the first zone were led by a US transnational entity, as the country lacked the knowledge and experience on this type of industrial development for attracting investment. In addition, it should also be mentioned here that the interference of the USA in the Dominican domestic affairs was stronger than ever after the invasion of 1965, through which they overthrew the first elected government in the

⁽²⁴⁾ Chomsky A., “*They take our jobs!*” *And 20 Other Myths About Immigration*, Boston, Beacon Press, 2007, p. 56.

⁽²⁵⁾ See Ley No. 4315 of 22 October 1955, consulted at <http://guiarepublicadominicana.com/images/pdf/leyes_tributarias/LEY4315.pdf>.

⁽²⁶⁾ As consulted at <<http://www.cnzfe.gob.do/evolucionhistorica.htm>>.

history of the Caribbean state,⁽²⁷⁾ with the end result in the terms of a compromise: on the one hand, the constitutionalists would surrender their left-wing allies and accept new elections; on the other, the US forces would withdraw.²⁸

The very first EPZ, however, was set up in Puerto Plata in 1963 under *Ley No. 38* of the same year, but then no adequate measures were taken so that it could be operative *de facto*.⁽²⁹⁾ Therefore, *Ley No. 299* of 1968 gave birth to a more specific regulatory system that was clearly needed, and later it was further consolidated into *Ley No. 8-90 of 15 January 1990*, together with other provisions taken during the years in between (“...un desarrollo acelerado y armonioso de las zonas francas del país requiere del ordenamiento y unificación de las diversas leyes y disposiciones legales sobre la materia existentes en la actualidad”).⁽³⁰⁾ Unlike the act of 1955, *Ley No. 8-90* also seems to be more conscious of the needs of the Dominican population itself. The opening words to the text of the law, indeed, affirm:

“Que las zonas francas de exportación se han convertido en fuentes permanentes de generación de empleos e ingresos para la población dominicana, debido a que pueden desarrollarse en cualquier lugar del país donde otras fuentes de trabajo no logran activarse con la misma y urgente rapidez.”

⁽²⁷⁾ “‘It is clear,’ the CIA wrote, ‘that [Bosch’s] return to his former position would be highly undesirable... He will in large measure be indebted to the Dominican Leftists and Communists for bring [sic] about the conditions which permitted his return.’. CIA, Intelligence Information Cable, 26 April 1965, DDRS, as quoted in Westad O. A., *The Global Cold War: Third World Interventions and the Making of Our Times*, Cambridge, Cambridge University Press, 2010, p. 151.

⁽²⁸⁾ *Ibid*, p. 152.

⁽²⁹⁾ De Moya Espinal F., *Las zonas francas industriales y las empresas multinacionales: Efectos económicos e impacto sobre el empleo en la República Dominicana*, Geneva, ILO/UNCTC, 1986, p. 1.

⁽³⁰⁾ See *Ley No. 8-90 of 15 January 1990*, as consulted at <http://www.dgii.gov.do/legislacion/leyesTributarias/Documents/8-90.pdf>.

And immediately after, it is declared:

“Que es de interés nacional promover una política dinámica de empleos por parte del Estado, estimulando la instalación y desarrollo de nuevas empresas cuya producción sea destinada principalmente al mercado exterior.”

Such act provides that operating permits may be granted to public, mixed, national or foreign entities and establish incentives that include exemption from corporate income taxes, taxes on construction, municipal taxes, import and export duties, mortgage, registration and property transfers, and VAT on goods and services. Said exemptions are available for a period of 20 or 15 years from the first day of production, whether the zone is located in the border areas or in the rest of the country. Furthermore, such periods are renewable at discretion of the *Consejo Nacional de Zonas Francas*, which is responsible for the implementation of the regulation concerning EPZs. Investments, whether they be in stocks, bonds or securities, must remain as such for a period of not less than three years, and the amount invested that was received exempted must not be returned to investors through any direct or indirect body before that period. These investments should focus on building construction, purchase and development of land, equipment, building materials and/or working capital.

The intent of *Ley No. 8-90* is the promotion of backward linkages between zone and local enterprises, particularly with regard to local materials. In the case of products manufactured within the country and whose export is permitted by the law, companies may export up to 20 per cent of their production to the local market and/or to the Dominican Republic upon payment of 100 per cent of the taxes. On the other hand, Dominican enterprises that supply zone investors may import materials for processing

without paying import duties, in order to put them on a more equal basis with products that the zone investors could import directly and easily. In addition, the *Ley No. 56-07* of 4 May 2007 introduces the opportunity for enterprises operative in EPZs to export to the Dominican custom territory up to 100 per cent of goods and services, which may be duty free in the case of finished goods chain belonging to the textile, clothing and accessories, furs, footwear manufacturing, leather goods. For all other products, they must pay 100 per cent of the fees and taxes imposed for similar imports, at the time of customs clearance, provided that they meet one of the following conditions:

- the product to export is not being manufactured in the territory of the Dominican Republic outside the zone;
- the product to export does contain local components, i.e. domestic raw materials, which account for at least 25 per cent of the total.⁽³¹⁾

Last but not least, by virtue of *Ley No. 8-90*, the Dominican Republic is – formally – committed to safeguard the rights of workers. It requires that operators and companies located in EPZs shall comply with all laws, rules and regulations that are laid down in the *Código de Trabajo* and in labour laws. They shall also meet the obligations under *Ley de Seguro Sociales* (Social Security Act), the Act establishing the *Banco de los Trabajadores*, *Ley No. 116* that created the *Instituto Nacional de Formación Técnico Profesional* (INFOTEP), international conventions signed and ratified by the Dominican Government, and, finally, observe the health care legislation for industrial facilities. Notwithstanding, the state was, is and will always be nothing more than the representative of a social class, and the Dominican one

⁽³¹⁾ See *Ley No. 56-07* of 4 May 2007, consulted at <http://www.cnzfe.gob.do/documentos/Ley5607/Ley5607.pdf>.

is no exception. Its role has been to protect and ensure the wealth of a few, even at the cost of responding to the dictates of foreign interests to the detriment of its own population (which, in this case, means to the detriment of Dominican workers). But issues relating workers' rights and conditions will be dealt in the following chapter.

For the moment, it is relevant to note that 2012 ended with a total of 53 zones in function, which shows a relative increase of 3.9 per cent compared with 2011.⁽³²⁾ Of these 53, 15 are public (28.30%), 35 are private (66.04%), and 3 are under mixed public-private administration (5.66%). As to the overall number of companies operative, it has increased by 1 per cent in the lapse of time 2011-12, passing from 578 to a total of 584. Looking at the figures, it seems safe to say that EPZs in the Dominican Republic have succeeded in their goal of attracting investment (the total investment of enterprises grew by 7.6 per cent from US\$ 2,913.69 million in 2011 to US\$ 3,133.97 million in 2012) and generating employment (134,266 employees in 2012, increased by 7.3 per cent over the previous year). The United States is the largest investor, with 48.7 per cent of the total in 2012, followed by the Dominican Republic (26.9%) and Canada (5.93%). The garment sector is the principal recipient of FDI, with 25.28 per cent in 2012, and it accounts for 30.30 per cent of zone employment. Other two important recipients are the sector of medical and pharmaceutical products (19.6%) and the tobacco and derivatives (16.2%), which employ respectively 13.3 per cent and 15.8 per cent of the total.

To conclude, Dominican EPZs are following a development trajectory that many zone-operating countries exhibit, too, in the sense that the number of

⁽³²⁾ These and the data that follow are the most recent available. They have been provided by the *Consejo Nacional de Zonas Francas de Exportación*, "Informe Estadístico del Sector Zonas Francas 2012", available at <http://www.cnzfe.gob.do/documentos/informesestadisticos/InfEst2012Esp.pdf>.

zones increases (as does investment), whereas the number of plants and jobs decreases simultaneously. This can be explained by the increasing competition in international markets that, in its turn, raises the costs, and consequently it encourages a kind of investment that is more capital-intensive than ever.

1.4 Alterations.

Export processing zones, as a foreign direct investment-led development strategy, do not follow the same pattern of implementation worldwide, but present some variations on the theme. The most relevant are the maquiladoras, the bonded warehouses and the special economic zones, which may be illustrated through a brief examination of the Mexican, Bangladeshi and Chinese cases.

1.4.1 Mexico: Las Maquiladoras.

Maquila is a Spanish word of Arab origin that means the portion of grain, flour or oil that the miller charged the farmers for grinding its raw material: to put it simple, it is the equivalent of “processing fee” (*Encyclopaedia Britannica*). In its current usage, it indicates a production process in which the producer does not own part of the inputs, and whose production is addressed to others (in the sense of a foreign market). In other words, it is a manufacturing plant that imports and assembles duty-free components for export. At the beginning they were conceived mainly as assemblage processes, but later they developed more capital and skill-intensive

production of electronics and components for cars. Maquiladoras are “not an ‘industry’ but plant operations in many industrial branches”.⁽³³⁾

Mexico began its industrial expansion in the 1930s mostly in the metropolitan areas and by relating on the import substitution model within a protectionist framework that promoted an inward-oriented market. Between 1950 and 1970, the employment growth counted on manufacture industry and the development of the tertiary sector. This situation favoured a demographic expansion, which affected the ability to create a sufficient number of jobs.⁽³⁴⁾ The *braceros* programmes, a series of treaties stipulated between Mexico and the US, allowed Mexican workers to be temporarily employed in the US. However, by 1964, when the *braceros* programmes terminated, an impressive number of Mexicans had already moved to the Northern part of their country in the hope to find some job, remaining unemployed. The unemployment rate was dramatic as well as all the related economical and social problems that such a phenomenon logically implicates.

Thus, Mexico negotiated with the US a set of rules ended up in the Border Industrialisation Program (BIP), which was inaugurated in May 1965 and formally instituted in October 1966: the introduction of Maquiladoras seemed to be the right tool to tackle the difficult situation.⁽³⁵⁾ The underlying idea was that capital-rich companies would establish assembly plants in designated areas along the border in order to provide employment to the abundant Mexican labour force; and at the same time, the arrangement would, of course, lower manufacturing costs for companies (in the following decades, nothing could prevent the sharp tones of an ever-growing debate on

⁽³³⁾ Galhardi R. M. A. A., *Maquiladoras prospects of regional integration and globalization*, Geneva, ILO, 1998, p. 2.

⁽³⁴⁾ *Ibid.*, p. 3.

⁽³⁵⁾ Taylor Hansen L.D., *The Origins of the Maquila Industry in Mexico*, Banco Nacional de Comercio Exterior (Secretaría de Hacienda y Crédito Público), Vol. 53, No. 11, 2003, p. 8, available at <http://revistas.bancomext.gob.mx/rce/magazines_en/24/6/tayl1103.pdf>.

whether the US companies were actually more attracted by the lack of an adequate environmental regulation and control mechanisms rather than anything else). In 1972, the Mexican Government issued the first regulations of the third paragraph of Article 321 of the Customs Post. This Regulation is the first to precede a comprehensive regulatory system that would establish the bases on which the maquiladora export industry could operate.⁽³⁶⁾

A substantial difference in respect to traditional EPZs is to be found in the medium-term nature of their very own strategy, which aimed at creating regional suppliers' chains that would eventually reintegrate the border economy to the national core. Also, the policy of exemption was restricted to the Northern border regions:

“Under the Border Industrialization Program, the Mexican Government permits foreign firms to establish plants within 20 kilometres (about 12.5 miles) of the U.S. border, from the Gulf of Mexico to the Pacific - some 2,000 miles. 1/ After obtaining approval from the appropriate Government ministries, the foreign firm may ship to its Mexican plant machinery and other raw materials needed for production; such materials are entered free of duties and other import restrictions that may prevail elsewhere in Mexico. (...) To obtain the duty-free privilege, the entire output of the facility must be exported. (...) In contrast to other areas in Mexico, 100 per cent foreign owner-ship of the facility is permitted in the border zone.”⁽³⁷⁾

Starting as an emergency measure to contrast unemployment, this industrial programme transformed itself both into the dynamic nucleus of the regional economies of the Mexican border, and into the most

⁽³⁶⁾ <<http://biblio.juridicas.unam.mx/libros/4/1935/7.pdf>>.

⁽³⁷⁾ United States Tariff Commission, “Economic Factors Affecting the Use of Items 807.00 and 806.30 of the Tariff Schedules of the United States”, Report to the President on Investigation No. 332-61 Under Section 332 of the Tariff Act of 1930, Washington D. C., TC Publication 339, September 1970, p.141.

successful among the industrialisation models of the country. In 1972, interior areas of Mexico were added to the previously designated border areas (with the exclusion of industrial concentrations around large cities), and in 1989, the export requirement was scaled down from 80 per cent to 50 per cent.⁽³⁸⁾ Maquiladoras have grown rapidly in number (5.146 as of May 2013) and generated a significant number of jobs (a total of 2.073.050 as of May 2013).⁽³⁹⁾ Nevertheless, such growth does not appear to have been accompanied to the same extent by rising skills, incomes or local economic development, even when maquiladoras tried to update their production capacity and moved into integrated manufacturing activity (so-called “flexible production”).

When The North American Free Trade Agreement (NAFTA) came into effect in 1994, the same advantages conceded to Mexican producers were extended to all producers in North America. In order to favour the consumption of Mexican inputs and promote the formation of backward linkages, the rules-of-origin provisions of NAFTA meant that inputs from outside North America would be liable for duty after 2001. However, it is safe to say that this did not happen. Furthermore, it should be added here that although NAFTA did manage to increase the Mexican labour force, for workers, the most important thing is the quality of their jobs, especially when the latter are being made very unstable due to their dependence on the US economy and corporations.

Even though this has been a quick overview on the maquiladora phenomenon, differences from classic EPZs in terms of origins, financing and external orientation, emerge quite clearly. Of course, they both started as

⁽³⁸⁾ Galhardi, *op. cit.*, p. 4.

⁽³⁹⁾ Data provided by INEGI (Instituto Nacional de Estadística y Geografía), available at <http://www.inegi.org.mx/sistemas/bie/>.

labour-intensive export enclaves that were set up in the 1960s in order to attract FDI. Maquiladoras, nevertheless, were conceived to tackle unemployment and consequently prevent its own population to migrate towards the US. The latter has been a source of capital investment and the main, if not the only, destination for maquiladoras exports. In other words, Mexico's maquiladora programme has been overwhelmingly oriented to the United States both actively and passively.

1.4.2 Bangladesh: The bonded warehouses and the garment industry.

When Bangladesh gained independence in 1971, it inherited a policy framework that tended to an industrialisation based on import substitution. By suffering a lack of investment capitals, as well as of access to updated technology, and, not least, inadequate linkages with the global markets, the Bangladeshi Government initiated a process of reform that aimed at the promotion of exports, so that the new policy regime offered a package of incentives mostly centred around price factor, such as export subsidies, duty free access to imports, tax holidays, tax rebates and credit guarantees. In order to attract an adequate inflow of FDI, the Foreign Private Investment (Promotion and Protection) Act came into effect in 1980 to guarantee equal treatment both to domestic and foreign investors.⁽⁴⁰⁾

The establishment of EPZs suited the intention to expedite the process of industrialisation in Bangladesh, because on the one hand, the implementation of economic and structural reforms would take some time before coming into

⁽⁴⁰⁾ Aggarwal A., *Performance of Export Processing Zones: A Comparative Analysis of India, Sri Lanka and Bangladesh*, New Delhi, Indian Council for Research on International Economic Relations, 2005, p. 12-13.

force; on the other hand, guaranteeing the development of infrastructure would be almost unaffordable. Under the *Bangladesh Export Processing Zone Authority (BEPZA) Act No. 36 (1980)*, which was subsequently amended by *Ordinance No. 49 (1984)* and *Ordinance No. 52 (1988)*, the legal framework for the creation of EPZs was finally provided.⁽⁴¹⁾ The primary objectives of EPZs in Bangladesh are:

- to foster the economic development of Bangladesh by encouraging and promoting foreign investment in a zone;
- to diversify the sources of foreign exchange earnings by increasing the exports of Bangladesh through a zone;
- to encourage and foster the establishment and development of industries and commercial enterprises in a zone in order to widen and strengthen the economic base of Bangladesh; and
- to generate productive employment opportunities and to upgrade the skills of labour and management through the acquisition of advanced technology.⁽⁴²⁾

The BEPZA is entrusted with the important task to pursue said objectives. The first two EPZs were set up in Chittagong and Dhaka, respectively in 1983 and in 1993, and today Bangladesh accounts for eight zones within its borders that employ a total of 21,431 workers in 2012-February 2013 (33,598 in 2011-12) and generates exports for about US\$ 4.2 billion.⁽⁴³⁾ In 1989, the Government exempted the zones from three major labour laws: these included the *Factories Act*, *The industrial dispute act* and the *Employment of Labour*

⁽⁴¹⁾ Bhattacharya D., *Export processing zones in Bangladesh: Economic impact and social issues*, Geneva, ILO/Bangladesh Institute of Development Studies, 1998, p. 1.

⁽⁴²⁾ *Ibid.*

⁽⁴³⁾ Data provided by BEPZA, available at <<http://www.epzbangladesh.org.bd>>.

(standing orders) *Act*, which in in turn were replaced by two instructions. The latter carried detailed guidelines on the classification of employees, minimum wages, additional benefits to be paid by the employers in general and for electronic industry, terry towel industry and textiles in particular. Clearly, this was a major incentive to the EPZ units that brought great benefits to business in the EPZs. Fortunately, labour reforms have been introduced recently in the zones and the new laws now require the units to have labour councils, whose representatives are to be elected by labour under the supervision of the zone authorities.⁽⁴⁴⁾

Apart from labour laws, zones are also exempted from a number of other laws: *The Stamp Act*, *The Excise and Salt Act*, *The Income Tax Ordinance*, *Foreign Exchange Regulation Act*, *The Land Development Tax Ordinance*, *The Municipal Taxation Act*, *The Building Construction Act*, and *The Chittagong Municipal Corporation Ordinance*. This means nothing else but that the units are exempted from all regional and municipal taxes. Other incentives for EPZ units include duty and preferential access to the EU, Canada, Norway and Australia and DTA (Domestic Tariff Area) sales of 10% of previous year's exports in sectors other than RMG (ready-made garments).⁽⁴⁵⁾

The export garment industry in Bangladesh is of particular interest because it has proved very productive. Almost coming out of nowhere, it arrived at the first place for exports already in the 1990s by taking advantage of a system of letters of credit and bonded warehouses. This impressive growth was largely due to the quota-based trading system under the MFA that obliged quota-poor East Asian exporters to find quota-rich production platforms in order to supply the developed country markets (that is, the US

⁽⁴⁴⁾Aggarwal A., *op. cit.*, pp. 33-34.

⁽⁴⁵⁾*Ibid*, p. 34.

and Europe). In order to satisfy this need, the Bangladesh Garment Manufacturers and Exporters Association (BGMEA) administered a bonded warehouse system through which cloth is dispatched exempt from duties by costumers for cutting and sewing before being exported directly to the distributor. Other incentives that were granted to the industry included duty-free import of capital goods and a tax at source of only 0.25 per cent.⁽⁴⁶⁾ Apparently, there are signs that the garment industry is upgrading from the simple assembly of shirts.

1.4.3 China: The Special Economic Zones.

EPZs have played a central role in the growth and liberalisation of China's economy and represent a really interesting case study, in that they are very different from those in other countries. In the 1980s, Deng Xiaoping's introduction of the first four EPZs (Shenzhen, Zhuhai, Shantou, and Xiamen) allowed China not only to attract FDI but also to experiment with market economics and modern techniques of enterprise management on a controlled basis; would they prove to be functional and effective, then they could be extended to other parts of the country if deemed necessary.⁽⁴⁷⁾

The difference between Chinese EPZs and those in other countries - and the consequent groundbreaking innovation that they introduced - lies in the fact that they are more jurisdictions than physical zones. In other words, they were not just industrial parks, but rather entire cities, if not even entire

⁽⁴⁶⁾ ILO, *Labour and Social Issues Relating to Export Processing Zones*, p. 6.

⁽⁴⁷⁾ McCallum J. K., *Export processing zones: Comparative data from China, Honduras, Nicaragua, and South Africa*, Geneva, ILO, 2011, p. 6.

provinces, which became *de facto* giant EPZs that were called Special Economic Zones (SEZs). The benefits and advantages brought by such change are manifold. Among the most relevant, it should be mentioned that they help to avoid many of the social problems experienced in “less organic” zones present in other countries for the simple fact that they contain all the usual community features (such as transport infrastructure, health and education services, residential and commercial areas, to name a few) for their very nature. And for the same reason, they offer a more comprehensive and integrated investment profile as well as they facilitate backward and forward linkages between zone locators and local enterprises.⁽⁴⁸⁾ Suffice to say that after China’s accession to the WTO, FDI to China surpassed those addressed to the US (moreover at a time in which inflows were globally diminishing).⁽⁴⁹⁾

Currently, there are seven different types of zones or areas in China that are available to investors, namely:

- Special Economic Zone (SEZ; SEZ, according to ILO’s typology);
- Open/Coastal/Riverside/Inland/Border City (SEZ, according to ILO’s typology);
- Economic and Technology Development Zone (ETDZ; Enterprise zone);
- High-tech Industrial Development Zone (HIDZ; Enterprise zone);
- Border Economic Cooperation Zone (BECZ; Enterprise zone);
- Bounded Zone/Logistics Park (BZ/BLZ; Industrial/Commercial free zone);
- Export Processing Zone (EPZ; Industrial/Commercial free zone);

⁽⁴⁸⁾ ILO, *Labour and Social Issues Relating to Export Processing Zones*, p. 7.

⁽⁴⁹⁾ <<http://news.bbc.co.uk/2/hi/business/3846439.stm>>.

- Industrial Park, Investment Zone (IP/IZ; Industrial/Commercial free zone).⁽⁵⁰⁾

Furthermore, foreign involvement can assume a variety of forms, with each one enjoying specific taxation and investment incentives and operating under different conditions. They may be:

- *representative offices* (only for preparatory or auxiliary activities, including market research and consultancy services; cannot recruit local staff directly without going through government authorized agents; may not earn income from local clients);
- *wholly foreign-owned enterprises* (must be approved by the Ministry of Foreign Trade and Economic Cooperation; may not be permitted in certain industries; have a limited lifespan, generally less than 50 years; may not reduce their registered capital during their term of operation);
- *equity joint ventures* (must be approved by the Ministry of Foreign Trade and Economic Cooperation; the foreign contribution must be at least 25 per cent and usually less than 50 per cent; capital contribution cannot be repaid in the lifetime of the joint venture and may be in cash or capital goods, etc.; profit-sharing is proportionate to investment; specified lifetime; taxable entity on worldwide income);
- *cooperative joint ventures* (must be approved by the relevant authority; based on specific contract and duration; foreign partner contributes equipment, cash, materials; Chinese partner contributes land and buildings; partners are separate taxpayers; foreign partners' contribution is repayable during joint venture period if assets are

⁽⁵⁰⁾ Fu X., Gao. Y., *Export Processing Zones in China: A Survey*, Report submitted to ILO, 2007, available at <<http://ilo.org/public/french/dialogue/download/epzchineseenglish.pdf>>.

transferred to the Chinese partner at the end of contract period with no consideration);

- *management/operation contracts* (used in industries such as tourism (e.g. hotel management); relatively short-term; unfavourable tax regime).⁽⁵¹⁾

The Chinese Government continues to increase the number of open areas and zones, which, as of 2006, were deemed to account for a total 1346.⁽⁵²⁾ These are gradually extending inland from the coastal areas that were originally opened to market economics. Unfortunately, apart from import/export volume, there are no statistical data on EPZs in China. Surveys of export production activities in (and outside) the Chinese EPZs would be useful for a comprehensive overview on the social and economic impact of the EPZ phenomenon in China.

1.5 EPZ: The challenge of definition(s).

The similarity of the zones located in a great variety of countries is striking, but it is precisely the role of the zones to overcome country-specific differences that may pose obstacles to the attraction of foreign direct investment. Throughout this chapter, we have also seen that there are a considerable number of variations on the theme, however. This makes the study on zones even more difficult than what it is already, because, as if the lack of updated and comprehensive data on the EPZ phenomenon was not

⁽⁵¹⁾ ILO, *Labour and Social Issues Relating to Export Processing Zones*, pp. 7-8.

⁽⁵²⁾ National Development and Reform Committee, *Bulletin Catalog of China's Development Zone Censor 2006*, as reported in Fu X., Gao. Y., *op. cit.*, p. 6.

enough, there is also the trap of terminology and definitions that may cause some serious problem of communication and/or comprehension. *Table 3* provides a very neat record of the evolution of terminology around the concept of zone.

Table 3 - The Evolution of Terminology

| TERM | MAIN USERS and DATE of FIRST USE |
|---|---|
| <i>Free trade zone</i> | Traditional term since nineteenth century; ILO (1982) |
| <i>Foreign trade zone</i> | Individual authors (R.S. Toman, 1956; W. Dymsha, 1964); India (1983) |
| <i>Industrial free zone</i> | Ireland (pre-1970); UNIDO (1971); Liberia (1975) |
| <i>Free zone</i> | UNCTAD (1973); USAID (1982); United Arab Emirates (1983) |
| <i>Maquiladora</i> | Mexico (early 1970s) |
| <i>Export free zone</i> | Ireland (1975); UNIDO (1976) |
| <i>Duty free export processing zone</i> | Republic of Korea (1975) |
| <i>Export processing free zone</i> | UNIDO (1976); UNCTAD (1983) |
| <i>Free production zone</i> | Starnberg Institute (1977) |
| <i>Export processing zone</i> | Philippines (1977); Harvard University (1977); APO (1977); WEPZA (1978); UNIDO (1978); WB (1978); The Economist (1979); Malaysia (1980); Pakistan (1980); Singapore (1982); UNCTC (1982); ILO (1983); |
| <i>Special economic zone</i> | China (1979) |
| <i>Tax free zone</i> | Individual authors (W.H. and D.B. Diamond, 1980) |
| <i>Tax free trade zone</i> | Individual author (D.B. Diamond, 1980) |
| <i>Investment promotion zone</i> | Sri Lanka (1981) |

| | |
|--|--|
| <i>Free economic zone</i> | Individual author (H. Grubel, 1982) |
| <i>Free export zone</i> | Republic of Korea (1983) |
| <i>Free export processing zone</i> | OECD (1984) |
| <i>Privileged export zone</i> | Individual author (N.N. Sachitanand, 1984) |
| <i>Industrial export processing zone</i> | Individual author (P. Ryan, 1985) |

Source: ILO/UNCTC: Economic and social effects of multinational enterprises in export processing zones. Geneva, ILO, 1988.

Not even on the definition of *export processing zone* there is a general agreement among international institutions:

- According to WEPZA, “EPZs are all government authorized areas such as free ports, free trade zones, custom free zones, industrial free zones or foreign trade or any other type of zone, as the Council may from time to time decide to include”.⁽⁵³⁾ (1978)
- According to UNIDO, “An EPZ is a relatively small, geographically separated area within a country, the purpose of which is to attract export-oriented industries, by offering them especially favourable investment and trade conditions as compared with the remainder of the host country. In particular, the EPZs provide for the importation of

⁽⁵³⁾ Statutes of the WEPZA, ID/W.6/266/6, 28th February 1978, as quoted by Kusago T. and Tzannatos Z., *Export Processing Zones: A Review in Need of Update*, Washington D. C., The World Bank, 1998, in Annex 2.

goods to be used in the production of exports on a bonded duty free basis”.⁽⁵⁴⁾ (1980)

- According to UNCTAD, “EPZs are industrial estates, which form enclaves within the national customs territory and are usually situated near an international port and/or airport. The entire production of such zones is normally exported. Imports of raw materials, intermediate products, equipment and machinery required for export production are not subject customs duty.”⁽⁵⁵⁾ (1985)
- According to ILO/UNCTC, “An EPZ could be defined here as a clearly delineated industrial estate which constitutes a free trade enclave in the customs and trade regime of a country, and where foreign manufacturing firms producing mainly for export benefit from a certain number of fiscal and financial incentives.”⁽⁵⁶⁾ (1988)
- According to the World Bank, “An *export processing zone* is an industrial estate, usually a fenced-in-area of 10 to 300 hectares, that specializes in manufacturing for export. It offers firms free trade conditions and a liberal regulatory environmental.”⁽⁵⁷⁾ (1992)

⁽⁵⁴⁾ UNIDO, *Export Processing Zones in Developing Countries*. New York, UNIDO, 1980, as quoted in *ibid*.

⁽⁵⁵⁾ UNCTAD, *Export processing free zones in developing countries: Implications for trade and industrialization policies*. New York, United Nations, 1985, as quoted in *ibid*.

⁽⁵⁶⁾ ILO/UNCTC, *Economic and social effects of multinational enterprises in export processing zones*, Geneva, ILO, 1988.

⁽⁵⁷⁾ World Bank, *Export Processing Zones, Policy and Research*, Series 20, Washington, D.C., World Bank, 1992, as quoted in Kusago, *op. cit*.

To conclude, it is curious to note that the WTO has not given any official definition of *export processing zone* up until now, supposedly because its principles are not line with the peculiar regulation that revolves around EPZs.

Chapter two: The Dark Side of EPZs: *Greed is good*

CONTENTS: 2.1 Exploiting a perfect system of exploitations. – 2.2 Greed is good. – 2.3 Wages. – 2.4 Women at work. – 2.5 “Do not listen to agitators and trouble makers” – 2.6 Working time, health and safety – 2.7 Obstacles. – 2.8 Moralised business: Greed is bad.

2.1 Exploiting a perfect system of exploitations.

In this increasingly globalised world driven by unbridled capitalism, we often happen to hear that the autonomy of the economic sphere is to be respected above all. As a consequence, this inevitably implies that the economy should play by its own rules and not according to moral considerations imposed on it from the outside. Such stance holds that the market is not compatible with ethics because voluntary “moral” actions contradict market rules and prevent a “moralised business” not only from succeeding, but even from existing. History shows that who participated in market were – and the majority of them still are – moved by the one inner logic of it, that is, focusing solely on efficiency. Morality has been deliberately discarded. There could be no place for the necessity of having to depend on such “abstract” things as virtues and values if, eventually, the market laws would lead both to progress and to some sort of re-distributive justice. Such assumption is based on the belief that the natural laws of the market are in essence good and necessarily work for the good, regardless of the morality of the individuals.

Well – and this is one of the key issues of the present thesis – the problems of today’s world economy show that these presuppositions are not universally applicable and correct, although the success of the market

economy may make one think otherwise. If anything, the great success of this approach did nothing but concealing all its limitations for a long time. However, now that the situation has radically changed, its implied assumptions start to emerge, and so do the problems related to them. If man is directly involved in the mechanisms of the market economy, then, how can his moral freedom be excluded from the world of economics? In 1962, activists of Students for a Democratic Society met in Port Huron, Michigan, US, to draft a manifesto that would become a milestone for many radical protest movements to come, in which they regretted that:

“From World War II until the mid-Fifties, the 50 biggest corporations increased their manufacturing production from 17 to 23 percent of the national total, and the share of the largest 200 companies rose from 30 to 37 percent. To regard the various decisions of these elites as purely economic is short-sighted: their decisions affect in a momentous way the entire fabric of social life in America. Foreign investments influence political policies in under-developed areas - and our efforts to build a "profitable" capitalist world blind our foreign policy to mankind's needs and destiny.”⁽⁵⁸⁾

In a then complete different world from the one of today, those students were sensitive enough to realise that the development of the world economy has also to do with, and cannot be irrespective of, the development of the world community; and, therefore, ethics turn out to be essential in the development of the very world community.

Nowadays, the argument on whether moral values should interfere with market or not has ceased to be a question that lays on a mere theoretical level.

⁽⁵⁸⁾ “Statement of Students for a Democratic Society, National Convention Meeting in Port Huron, Michigan, June 11-15, 1962”, available at <http://coursesa.matrix.msu.edu/~hst306/documents/huron.html>>.

Given that the free market is now more than ever endangered by the inherent inequality between single economic zones, it seems safe to say that the structural changes in the name of development - which have been discussed in the previous chapter - have not succeeded in restoring any sort of real balance.⁽⁵⁹⁾ Should we keep on burying our own heads in the sand like ostriches or we can finally admit that not only these attempts have failed, but they have even intensified the existing inequality? The model of development proposed by the developed countries has turned developing countries' big hopes into misery, if not into an "institutionalised" injustice. Speaking of EPZs, there is no doubt that they constitute a highly successful model from the point of view of the rate of growth, or the number of endorsers, or the rate of diffusion. Yet this model has been successful to the benefit of whom? Except for a few cases, surely not to the benefit of the peoples; rather, to the benefit of those businessmen, foreign corporations and local political élites, which exploited a perfect system of exploitations. Woodrow Wilson himself had already made clear that:

“Since trade ignores national boundaries the manufacturer insists on having the world as a market, the flag of his nation must follow him, and the doors of nations which are closed against him must be battered down. Concessions obtained by financiers must be safeguarded by ministers of state, even if the sovereignty of unwilling nations be outraged in the process. Colonies must be obtained or planted, in order that no useful corner of the world may be overlooked or left unused.”⁽⁶⁰⁾

⁽⁵⁹⁾ See note 17.

⁽⁶⁰⁾ Woodrow Wilson as quoted by Chomsky N. in *On Power and Ideology*, USA, South End Press, 1987, p. 14.

We shall henceforth consider what is on the other side of a development project such as that of EPZs, starting from the assumption that equal rights will never be a standard both inside and outside of the EPZs as far as the market economy will remain anchored on the short-term “beneficial effect” of competing egoisms and their inevitable limitations. The examples that shall be taken in this chapter might not be much encouraging, but the hope is that governments, international intergovernmental organisations, nongovernmental organisations, corporations and, in general, all the actors that play an active role in influencing the future of the world, could harmoniously operate within a context permeated with ethics. For this reason, it may be as naive as utopian asking to drop the tension toward the maximisation of profit in the place of self-restraint; still, it does not seem inappropriate to wish for a market economy that reconciles efficiency with morality.

2.2 Greed is good.

As it has been said in chapter one, the very concept of EPZ contains a great contradiction within it: given that the duty-free imports are granted only for the assembly of products to be eventually exported, the impact on the host countries will be somewhat limited. The universe of laws that regulate the establishment of EPZs appears to be very coherent in ensuring that privileges will be applied only to such “import-assembly-export” activities, marking a neat separation of the zone investment from the local economy. Therefore, zone enterprises have taken full advantage of the situation in order to operate in complete autonomy. It is interesting to note that, in 1971, even a publicly available information source as *The New York Times* reported that “the companies attracted to the zones have been involved primarily in simple

assembly operations that do not introduce much new technology” and that zones simply “continue to reap benefits from the presence of labor-intensive industries attracted to [a] country chiefly by its low wage rates”. In addition, the same article stresses that the number of companies led by local investors is almost insignificant, whereas the zone administration favours foreign investors by conceding “special privileges”. It is finally mentioned that there is another shortcoming due to “the limited amount of materials that industries in the zone have bought locally”.⁽⁶¹⁾ And it is also important to underline the fact that the same newspaper had published just four years earlier an article in favour of the Taiwanese Kaohsiung zone, which ended with detailed contacts for those who happened to be interested in obtaining “free information on investment and trade opportunities in Taiwan”.⁽⁶²⁾

But what is at the core of the aforementioned contradiction? To put it differently, what is the mantra of those who have made their huge profits thanks to the EPZs? Surprisingly, there are no scholars or books that could explain it more straightforwardly than the famous speech of Michael Douglas as Gordon Gekko addressing to the Teldar Paper board at the shareholders’ meeting in the 1987 film “Wall Street”:

“The point is, ladies and gentleman, that *greed* — for lack of a better word — *is good*.”

Greed is right. Greed works. Greed clarifies, cuts through, and captures the essence of the evolutionary spirit. Greed, in all of its forms — greed for life, for money, for love, knowledge — has marked the upward surge of mankind. And

⁽⁶¹⁾ “Taiwan Export Processing Zone Criticized: Taiwan Export Processing Zone Is Beginning To Draw Criticism”, The New York Times, 27 December 1971.

⁽⁶²⁾ “Unique Bonded Factory Zone at Kaohsiung Offers Many Special Benefits to Investors”, The New York Times, 20 January 1967.

greed — you mark my words — will not only save Teldar Paper, but that other malfunctioning corporation called the USA. Thank you very much.”

Whether be they public or private, EPZs engage a *partnership of interests* between governments and transnational capital investing in the zones. On the one hand, the former endeavour to create and preserve the ideal conditions for the highest profit; and, on the other hand, foreign investors put pressure on governments to repress workers’ rights and undermine the basis of organised labour.⁽⁶³⁾ In 1997, for instance, Sanyo, TDK and Honda (three of the largest Japanese corporations in Thailand) made a formal request to the Thai Minister of Labour to deal with “violent labour disputes” in the zones, demanding that the Government rigorously implemented laws on labour controversies. In particular, they were complaining about “militant” strikes, such as those organised by the workers’ collective action of Suzuki and Sony between 1996 and 1997. In confirmation of the *partnership of interests* mentioned above, the Thai Government responded by arresting a former leader of the Thai Suzuki Workers’ Union, Sarit Chiemkamol, who assisted the Thai Suzuki workers - under the Thai law, indeed, providing third party advice to the union is considered a criminal act.⁽⁶⁴⁾ Furthermore, an official delegation to led by the Thai Minister of Labour was sent to Japan with the intent to preserve good relations with Japanese investors through the offer of a greater commitment in ensuring “peaceful” labour relations in Thailand, especially in the EPZs.⁽⁶⁵⁾

⁽⁶³⁾ Asian Monitor Resource Center Ltd., *We In The Zone: Women Workers In Asia’s Export Processing Zones*, Hong Kong, AMRC, 1998, p. 4.

⁽⁶⁴⁾ Asia Pacific Workers Solidarity Links, “Third party intervention arrest under old military dictatorship decree in Thailand” in *Action Alert*, 23 June 1997, as reported in *Ibid.*

⁽⁶⁵⁾ Wong-Anan N., “Japanese firms in Thailand fear more disputes” in *Asian Wall Street Journal*, 28 May 1997, as reported in *Ibid.*

In some instances, transnational corporations have placed such a direct pressure on governments that not only they managed to build their own zones (where they operate with their own internal regulations and incentives) and hold a dominant position within the official body (which is supposed to enforce regulations and standards), but they even succeed in limiting the government's own capacity to regulate the zones by reformulating the legal definition of EPZ. According to the Asia Monitor Resource Center Ltd. (AMRC), for example, Japanese auto-makers together with South Korean and Taiwanese light industrial manufacturers exerted so much pressure on the Vietnamese Government that the Noi Bai EPZ was then reclassified as an Industrial Zone (IZ).⁽⁶⁶⁾ In this way, investors both elude the existing regulations on EPZs and even take advantage of the unclear legal status and lack of regulations on the new subject. Nevertheless:

“Even where labour laws are uniform nationally, there is evidence of more lax enforcement of labour law in EPZs and restrictions on trade union creation and actions, meaning that working hours are longer and the pace of work is faster; and trade unions are often forbidden (as was the case until recently in Bangladesh) or at least discouraged (hence the term sweatshops sometimes used in this regard).”⁽⁶⁷⁾

⁽⁶⁶⁾ Asian Monitor Resource Center Ltd., *We In The Zone: Women Workers In Asia's Export Processing Zones*, Hong Kong, AMRC, 1998, p. 5.

⁽⁶⁷⁾ Cling, J. et al, *Export Processing Zones in Madagascar: A Success Story under Threat*, World Development, Vol 33, No. 5, 2005, pp. 785–803, as quoted by Milberg W. and Amengual M. in *Economic development and working conditions in export processing zones: A survey of trends*, Geneva, ILO, 2008, p. 12.

ILO studies on EPZs agree that some countries have adopted special labour codes in order to grant more flexibility to zone-based companies, even by performing relatively weak labour inspection practices, ultimately weakening the scope of the rights to workers in those very zones. In other words, it is clearly evident that EPZs constitute the perfect *medium* for employers to dodge workers' rights with almost absolute impunity. As absurd as it may sound, in most of the cases governments seem to be lacking not just the resources, but also the desire to maintain law and order in the zones. And even when there are regulations ready to be enforced, governments repeatedly lack the resources to prosecute the culprits. Nonetheless, to this day, insufficient systematic investigation has been carried on to actually assess the ability of governments to effectively police EPZs.⁽⁶⁸⁾

2.3 Wages

The belief that wage rates are the principal factor determining the choice of production platform is quite widespread. And so is the assumption that EPZs are an ideal source of cheap labour. Surprisingly enough, the distribution of production on a global scale cannot be fully comprehended if assessed in the light of wage rates alone. In choosing a production platform, a corporation management body may indeed weigh as much wage rates as the productivity factor. Although in the previous chapter it has been stressed how low wage rates are just *one* of the principals factors when it comes to asses where to direct investments, it easy to understand why wage rates is often considered to be *the* factor: if one compares the minimum wages applying in EPZs and

⁽⁶⁸⁾ McCallum J. K., *op. cit.*, p. 3.

those granted in the home countries of the very same MNEs that operate in those zones, the difference will inevitably make some head spin.

The fact is that the remuneration of workers in EPZ is a much more complex issue than one might think at a first glance. There are four different points to take into consideration:

1. minimum wage rates apply in most zones, either the national rate or a rate determined specifically for the zone;
2. the take-home pay of the zone workers is generally greater than the minimum wage might suggest because it is common for enterprises to use piece-rate or incentive pay systems;
3. unit labour costs are even higher because zone employers are often providing non-wage benefits and other contributions on top of the basic wage;
4. the choice of a production platform may depend as much on productivity as on wage rates.⁽⁶⁹⁾

In sum, the *unit labour cost* shall be analysed better in the light of the following two factors: labour cost and productivity. In confirmation of this, there are countries that are considered high-wage economies, such as Singapore, Mauritius and Malaysia, where the inflow of FDI is of definitely significant relevance – something that could be explained only through the higher productivity of EPZs located in those countries.⁽⁷⁰⁾

It is interesting that comparative studies on wages (mostly in the apparel sector) in EPZs have revealed how the remuneration for equivalent work in

⁽⁶⁹⁾ *Labour and social issues relating to EPZs*, ILO, 1998, p. 28.

⁽⁷⁰⁾ See ILO (*ibid.*); and Milberg and Amengual, *op. cit.*

the rest of the country does not actually differ that much. In very truth, minimum wage rates (when they exist) and take-home pay are often higher inside zones than in comparable business outside; in addition, non-wage benefits and social security contributions are also fairer to zone workers. According to Romero,⁽⁷¹⁾ Kusago and Tzannatos,⁽⁷²⁾ there is no relevant difference between wages of clothing factories located inside Asian EPZs and those on the outside. Focusing on EPZs in Madagascar, Cling et al. report that remuneration is at about the same the same level as in the equivalent formal sector outside EPZs and even higher than wages in the informal sector, asserting that “being hired in the Zone Franche therefore improves a workers situation compared with previous employment, as concluded also by Nicita and Razzaz”.⁽⁷³⁾ Through a business survey, Jenkins contributes to the argumentation revealing that “salaries paid by the great majority of EPZ firms are higher than the reported median salary paid in the Costa Rican local economy for the same occupation group”.⁽⁷⁴⁾ To conclude the list of examples in support of such stance, Aggarwal not only confirms that “average wages in [Indian] zones are not very different from the factory sector average in the respective state”,⁽⁷⁵⁾ but also holds that:

“ (...) there is little evidence to support the argument that low wages are widely prevalent in the zones due to lax attitude of the authorities towards labour laws. During our visits to new zones, we found that in some of the new zones (for

⁽⁷¹⁾ See Romero. A., “Labour standards and EPZs: Situation and pressures for change”, *Development Policy Review*, V.13, 1995.

⁽⁷²⁾ See Kusago T. and Tzannatos Z., *op. cit.*

⁽⁷³⁾ Cling et al., *op. cit.*, p. 799.

⁽⁷⁴⁾ Jenkins, M., *Economic and social effects of export processing zones in Costa Rica*, Geneva, ILO, 2005, p. 22.

⁽⁷⁵⁾ Aggarwal A., *Impact of Special Economic Zones on Employment, Poverty and Human Development*, Indian Council for Research on International Economic Relations, 2007, p. 24.

instance, Nokia and Flextronics), wages offered are significantly higher than outside the zones.”⁽⁷⁶⁾

Bearing in mind that the present dissertation does not want to give the impression that workers’ experiences are the same in all the EPZs around the world, it is difficult not to wonder whether there are plausible universal reasons behind such an unexpected outcome. In 1998, the ILO proposed four hypotheses:

- in some countries zone employment has negative connotations and zone employers are consequently obliged to pay a premium to get workers to come and work for them;
- in tight labour markets wage rates rise;
- zone enterprises are often large MNEs which can and do pay better than local employers;
- zone enterprises generally use remuneration systems such as piece-rate or incentive schemes which give workers a higher take-home pay, although this often implies longer hours of more intensive work than in non-zone enterprises.⁽⁷⁷⁾

They all seem to be reasonable explanations and it is not to be forgotten that they were postulated fifteen years ago. Nevertheless, it appears that said motives should be, if not replaced, at least integrated with three other factors:

- not only can large MNEs pay better than local employers, but they are almost compelled to offer better economic standards if they want to

⁽⁷⁶⁾ *Ibid.*

⁽⁷⁷⁾ *Labour and social issues relating to EPZs*, ILO, 1998, p. 28.

escape the negative publicity supported by the widespread criticism towards the concept of EPZ;

- also, for their very own nature, MNEs are much more subjected to public exposure (with all the inevitable concerns in terms of image that this entails) than local zone operators;
- consequently, there is an ever-increasing number of MNEs interested in adopting that corporate self-regulation which goes under the tag of Corporate Social Responsibility (CSR), in order to mark the difference with all those local outfits that prefer to elude the law.

Therefore, notwithstanding the – well-documented – problem of a lack of enforcement of existing labour laws in many EPZs, and in numerous instances even the undermining of CLS within zones, wage rates in EPZs cannot be generally considered to be inferior to those applying outside the zones themselves. However, this does not mean that wages are “decent” and that the living conditions of zone workers are better off. If anything, this may imply that the situation of workers employed outside the zones – who obviously outnumber the former – is even more tragic. In addition, general affirmations on a presumed equity between wage rates inside and outside EPZs are likely to overshadow the inequities in treatment reserved to female workers. In EPZs, it is not unusual to observe strong discriminations between man and women on issues of both equal treatment and pay equity.

Already in 1987, Kreye et al. found that by the mid-1970s, a distinctive structure of employment has emerged in EPZs, according to which the majority of the employed are: women; aged between 16 and 25 years; unskilled or semi-skilled; employed as production workers.⁽⁷⁸⁾ Such

⁽⁷⁸⁾ Kreye O. et al., *op. cit.*, p. 17.

feminisation of labour in EPZs may be thus understood – at least at its initial stage – within a context of low-skill and low-paid jobs. For instance, “it is now widely appreciated that the Asian export boom was driven by the productive contribution of Asian women (...)”, given that “the share of female employment in total employment in EPZs and export-oriented manufacturing industry typically exceeded 70 per cent (...)”.⁽⁷⁹⁾ And the same trend was also observed in a remarkable number of other countries. However, the situation may be expected to evolve, if that shift predicted by some analysts toward the requirement of higher-skilled workforce will actually take place, because, as a consequence, higher wages would attract more male workers.

2.4 Women at work.

EPZs have played a fundamental role in giving women the opportunity to enter the formal sector,⁽⁸⁰⁾ and as *Table 2* shows, they constitute the overwhelming majority of zone workers in most countries (particularly in the garment and electronics sectors). At the same time, however, it ought to be pointed out that neither policy nor practice in EPZs have so far reflected the importance of women’s economic role. Issues related to female workers should require extra-special attention from investors, unions, governmental and non-governmental agencies, not just because they make up the greater

⁽⁷⁹⁾ Ghosh J., “Informalization, migration and women: Recent trends in Asia” in Banerjee D. and Goldfield M., *Labour, Globalization and the State: Workers, women and migrants confront neoliberalism*, New York, Routledge, 2007, p. 106.

⁽⁸⁰⁾ ILO, “Note on the proceedings: Tripartite Meeting of Export Processing Zones-Operating Countries. Geneva, 28 September – 2 October 1998”, Geneva, ILO, 1998, par. 28, p.16.

part of workers in EPZs, but because they experience the living and working conditions in a complete different way than their male counterparts. The fact is that women – for reasons that shall be discussed below – generally cover a weaker position than man, turning out to be more vulnerable and, therefore, more severely affected by any problem associated with EPZs.

Table 2: Women’s employment in EPZs

| Countries | Total employment | % fem. |
|------------------|-------------------------|---------------|
| Morocco | 145 000 | 20 |
| Cape Verde | 1 180 | 88 |
| Kenya | 38 851 | 60 |
| Malawi | 29 000 | 51 |
| Madagascar | 115 000 | 71.1 |
| Mauritius | 65 512 | 62.6 |
| Bahrain | 299 080 | 10 |
| Jordan | 54 515 | 32.5 |
| Bangladesh | 188 394 + 3 250 000 | 85 |
| India | 100 650 | 31.97 |
| Sri Lanka | 410 851 | 77.72 |
| Korea, Rep. of | 39 000 | 70 |
| Malaysia | 369 488 + 122 000 | 54 |
| Philippines | 1 128 197 | 74 |
| Viet Nam | 950 000 | 45 |
| Belize | 44 333 | 42.9 |
| El Salvador | 76 134 | 85 |
| Guatemala | 22 000 + 50 000 | 70 |
| Honduras | 353 624 | 75 |

| | | |
|--------------------|---------------------|-----------------|
| Mexico | 212 125 + 3 100 000 | 60 |
| Nicaragua | 340 000 | 90 |
| Panama | 18 000 | 70 |
| Dominican Republic | 154 781 | 53.1 |
| Haiti | 10 000 | 69 (in apparel) |
| Jamaica | 20 000 | 90 |
| Fiji | 12 989 + 111 941 | 34.57 |

Source: Author's elaboration of data provided by ILO 2007 (Boyenge, *op. cit*)

More than often, cultures have traditionally assigned the task of dealing with economic production to man, while giving the responsibility for social *re-production* to woman. Nevertheless, following the change of attitudes occurred during the second half of the twentieth century due to the structural adjustments of the economy (which – without exaggeration – have forced women to enter the labour market), women have found themselves invested with a new responsibility without being relieved of their former domestic responsibilities.

“The opening of an industrial estate near the village has led to a reduction in the emigration of workers. There are more marriages among young couples coming from different villages, as well as delayed marriages because of the additional responsibility of work and the rising cost of living.

After the industries came, life in the villages changed enormously, especially with regards to the role of women in society. In the past, outside of the planting season, the men would work as carpenters and the women were engaged in sewing and basket-weaving. But, modern [life] values and rising family expenditures have pushed women to engage in off-farm activities. Also, hoping to earn more income to cover rising expenses, women get to work early and return late at night,

especially when overtime work is available. Some women also study while working in [the hope of] promote their career by earning their certificate.”⁽⁸¹⁾

In fact, it is not unusual to read surveys by workers’ organisations and NGOs concerned about the matter reporting that women earn the major, or even the only, income in the household. Issues such as high labour turnover, late-coming, or absenteeism, happen to be very frequent for women in EPZs, and their cause is not so difficult to understand. It is quite logical for a woman charged with domestic responsibilities to worry about the health, well-being and security of her children and family members,⁽⁸²⁾ even when doing 12-hour shifts daily:

“The women workers expressed the problem of child care for those workers with young children who worked shifts. This burden is almost exclusively borne by women. Further, our survey found that 73% of the respondents said that women were discriminated against in the workplace. Only 37% said that there was no discrimination. Those that felt there was discrimination said that the

⁽⁸¹⁾ Thanachaisethavut B. and Chouwilai J., “Women workers in export processing zones: A case study of the Northern region industrial estate in Thailand”, in AMRC, *op. cit.*, p. 78.

⁽⁸²⁾ For instance, the International Labour Rights Forum (ILRF), in support of the 2003 “Rights for Working Woman Campaign”, collected some testimonies of women working in Dominican EPZs: “I have a husband and two children but I live alone. They live out in the countryside because the money isn’t enough to pay for a home in the city.” (Irene) “My children live with my mother in a neighbourhood not too far from here. I see them during the weekends, because during the week I get home too late from the factory and would not be able to see them on a daily basis, and besides, I wouldn’t have enough money to buy bus tickets to see them every day. I work in the EPZ to help my kids. If it weren’t for them, I would not be working there because (...) the father of my children doesn’t give them anything. Also, one of my children is sick, so I have to buy him the medicine he takes daily and support my mom who cares for him.” (Andrea) “The supervisor had reported that I was not meeting my weekly quotas, that I would constantly arrive late to work and that I had been disrespectful to him. I was punished, but I couldn’t say anything or leave my job on account of my three small children.” (Dilena) “I am a single mother of a small boy.” (Elizabeth)

The document is available at <<http://www.laborrights.org/sites/default/files/publications-and-resources/DominicanRepublic.pdf>>.

discrimination existed in the form of lack of promotion opportunities for women, lack of training to improve their career prospects, and the lack of women in supervisory and managerial capacities.”⁽⁸³⁾

This, in addition to fatigue and stress, may act as a determinant factor of distraction at work that may lead to fatal consequences. Employers complain of the matters mentioned above,⁽⁸⁴⁾ but let us say that it seems quite ironic the fact that they do not understand – or, more probably, they just do not want to understand – how their root causes lie within a context of unsatisfactory social and working conditions. For this reason, in the 1998 Tripartite Meeting of Export Processing Zones-Operating Countries, the ILO Governing Body elaborated a series of guidelines specifically addressed to the enterprises “in view of the high proportion of women employed in EPZs”, by giving them the responsibility to “make special efforts to ensure that”:

- a) women workers are not discriminated against and in particular that they receive equal wages for work of equal value;
- b) women workers enjoy maternity protection and benefits. Measures that could be considered include paid and unpaid maternity leave, employment security during pregnancy and maternity leave, and nursing breaks and facilities;
- c) measures exist to help workers combine work and family responsibilities. Measures that could be considered include the limitation of excessive working hours and night work, the provision of child-care facilities and the allocation of hours or days of leave to take care of the children;

⁽⁸³⁾ Persatuan Sahabat Wanita Selangor, “Export processing zones: A micro view after 25 years in Malaysia”, in AMRC, *op. cit.*, p. 60.

⁽⁸⁴⁾ ILO, “Labour and social issues relating to EPZs”, Geneva, ILO, 1998, p. 31.

- d) education, policies, and procedures are in place to prevent sexual harassment and to deal with it;
- e) measures exist to encourage the promotion of women workers to technical and managerial positions.⁽⁸⁵⁾

Hence, as it can be easily inferred from this list, gender-related barriers have been observed in the operation of some EPZs in the form of discrimination in wages, benefits, hiring and career development,⁽⁸⁶⁾ as well as relating to a lack of adaptation and adjustment to women workers' necessities deriving from such issues as pregnancy, maternity leave, childcare and working hours. With regard to said aspects, the ILO and the Committee of Experts on the Application of Conventions and Recommendations (CEACR) try to do their best in ensuring that women workers' rights are being respected worldwide. For instance, it has been reported that zone workers in Ecuadorian EPZs do not receive cash maternity benefits from the Social Security Institute;⁽⁸⁷⁾ or that in Mauritius there is a tripartite fund created by the Government to finance social services for workers in the Export Processing Zone called "EPZ Labour Welfare Fund". The latter is a very interesting model, in that one of its main programmes involves giving start-up and operating grants to non-governmental organisations to create and run day-care centres in areas with

⁽⁸⁵⁾ ILO, "Note on the proceedings: Tripartite Meeting of Export Processing Zones-Operating Countries. Geneva, 28 September – 2 October 1998", Geneva, ILO, 1998, par. 29, p. 16.

⁽⁸⁶⁾ "EPZ employers are reluctant to employ married women and they discourage young girls from getting married. Employers also try to get rid of women workers when they get pregnant. We came across an employer who stipulated in the letter of appointment that workers are prohibited from having love affairs and if they get married they are prohibited from having children during the first two years of marriage." Marcus A. et al., "Free Trade Zones and the 'Transnationalisation' of the Sri Lankan Economy", in AMRC, *op. cit.*, p. 142.

⁽⁸⁷⁾ CEACR (ILO), individual observation published in 2009 concerning the application by Ecuador (ratification:1962) of the Maternity Protection Convention (Revised), 1952 (No. 103).

many factory workers and subsidising preschool fees for the children of EPZ workers. What is peculiar of this Mauritian “EPZ Labour Welfare Fund” is its mentioned tripartite constitution, which sees the participation of both employees and employers in addition to the Government’s (around 1998, workers and employers contributed 1 and 3 rupees per month respectively, whilst the Government provided 2 million rupees).⁽⁸⁸⁾

Much effort is also being put in asking governments to provide full information on how the principle of equal remuneration is applied in the context of EPZs or to what extent women have access to training and career advancement. However, the role of governments is somewhat controversial. For instance, by virtue of the ILO Convention No. 89, which was regularly ratified by Sri Lanka, women workers are prohibited from being employed after ten o’clock in the evening; nevertheless, “due to pressure from investors, the Government has relaxed this regulation and women workers are forced to work the night shift (10:00 PM to 6:00 AM)”, even without prior notice.⁽⁸⁹⁾ This is a case in point that demonstrates the indispensable role of monitoring bodies free of any interest other than that of the safeguard of workers. In this sense, it is possible to appreciate the concerted action of CEACR together with the International Confederation of Free Trade Unions (ICFTU; today known as International Trade Unions Confederation, ITUC) in fighting against the practice of imposing pregnancy tests by some employers in Mexican *maquiladoras*. Only the words of a victim of such a shameful practice can describe the entity of this issue. The following is the testimony of Monica, a woman of twenty-six, who was recruited in 1999 by contract

⁽⁸⁸⁾ Hein C. and Cassirer N., “Workplace solutions for childcare”, Geneva, ILO, 2010, pp. 116-117.

⁽⁸⁹⁾ Marcus A. et al., *op. cit.*, pp. 142-143.

manufacturer SCI to work in an assembly line producing Hewlett Packard printers, where remained until 2001:

“They did a psychometric test on me and then asked normal questions, without all the personal stuff I had at IBM. But then came the medical exam. I was in a room with two nurses. Well they were dressed like nurses anyway. They were both very rude and really bullied me around, shouting at me to do this, do that. They asked me all those questions about drinking, smoking, illnesses in the family. Then one said, ‘Strip off, I need to check you for tattoos.’ My word was not good enough. I had to take off all my clothes, including my underwear. They even touched me while I was naked, checking my breasts. I don’t know what they were really looking for.

After that, they asked me if I was pregnant. I said no, but that wasn’t enough. They gave me a test paper and ordered me into the bathroom telling me to do the pregnancy test. They said, ‘If you have your period then you have to show us your sanitary towel to prove that you are bleeding.’

It was a totally humiliating experience. It was the worst thing I have ever had to go through. It was completely degrading. But I didn’t know how to complain – I mean, they were doing the same thing to everyone.”⁽⁹⁰⁾

Under the solicitations of trade unions to CEACR for stories like this, the Committee has elaborated numerous observations and direct request to the Mexican Government to provide information on the measures adopted or envisaged to ensure adequate protection against discrimination of women

⁽⁹⁰⁾ The excerpt concludes: “CAFOD [Catholic Agency For Overseas Development] has anecdotal evidence from many other workers that these practices continue [HP emails to CAFOD, 7 November 2003 and 11 November 2003]. CAFOD offered Hewlett Packard the opportunity to comment on Monica’s story. In its defence, Hewlett Packard said it had no prior knowledge of the situation and, if it had, would have taken immediate action.” Perman S. et al., *Behind the Brand Names: Working conditions and labour rights in export processing zones*, ICFTU, 2004, p.46, available at <<http://www.newunionism.net/library/internationalism/ICFTU%20-%20Working%20Conditions%20amd%20Labour%20Rights%20in%20Export%20Processing%20Zones%20-%202004.pdf>>.

domestic workers (Discrimination Convention, 1958, No. 111, ratified by Mexico in 1961). From a comparison between the Committee's observations published in 2002,⁽⁹¹⁾ 2005,⁽⁹²⁾ and 2007,⁽⁹³⁾ and the latest one, published in 2012,⁽⁹⁴⁾ it would seem that efforts to combat the practice of pregnancy test in *maquiladoras* has been if not eradicated, at least dramatically reduced – although other discriminatory problems still remain, such as “excessively long working hours, the absence of contracts, the lack of social security coverage, pay lower than the statutory minimum, and moral and sexual harassment”.⁽⁹⁵⁾ The latter actually represents one of the most difficult plague to defeat, because, for intuitable reasons, women workers in EPZs find particular difficult to speak about such a delicate question. And this does nothing but help the sexual aggressors.

It has been stressed that data related to EPZs are – to use and euphemism – meagre; but be they scarce or out of date, they are available anyways. Unfortunately, the same cannot be said for data related to social issues. “Given that these types of violations are difficult to uncover, it is problematic to draw conclusions about the exact magnitude of these problems”.⁽⁹⁶⁾ For this reason, statistics as those in the following tables are of great value.

⁽⁹¹⁾ Adopted 2002, published 91st ILC session (2003).

⁽⁹²⁾ Adopted 2005, published 95th ILC session (2006).

⁽⁹³⁾ Adopted 2007, published 97th ILC session (2008).

⁽⁹⁴⁾ Adopted 2012, published 102nd ILC session (2013).

⁽⁹⁵⁾ *Ibid.*

⁽⁹⁶⁾ Milberg W. and Amengual M., *op. cit.*, p. 51.

Table 2.2 – Women who have experienced sexual harassment in EPZs

| Condition | % |
|-------------------------------------|------------|
| Have been harassed in the workplace | 40.7 |
| Have not been harassed | 59.3 |
| <i>Total</i> | <i>100</i> |

Source: International Labor Rights Fund (Pantaleón, 2003)

Table 2.3 – Aggressors' position within the company

| Position | % |
|--|-------------|
| Boss (engineers, administrators, etc.) | 17.1 |
| Unit supervisor (immediate boss) | 13.3 |
| Another supervisor | 13.3 |
| Co-worker | 46.7 |
| Others | 9.5 |
| <i>Total</i> | <i>99.9</i> |

Source: International Labor Rights Fund (Pantaleón, 2003)

Table 2.4 – Average age of victims of sexual harassment in the Dominican Republic's EPZs

| Age | % |
|-------------------|------------|
| Under 15 | 1 |
| Between 15 and 18 | 7 |
| Between 19 and 25 | 53 |
| Between 26 and 35 | 28 |
| Over 45 | 11 |
| <i>Total</i> | <i>100</i> |

Source: International Labor Rights Fund (Pantaleón, 2003)

Notwithstanding *Table 2.2* shows that 40.7 women out of 100 are victims of sexual harassment in Dominican EPZs, it is worth adding that the percentage may be higher. Traditional socio-cultural implications easily prohibit women from discussing openly about their experiences, thus ending up with tolerating even something as serious as a sexual harassment. *Table 2.3* highlights that the major threat to EPZ women workers in the Dominican Republic is posed by their co-workers (46.7%) and then, with a lower percentage, by their bosses (17.1%). However, ILRF reveals that when the victims advance accusations against their aggressors, not only they are in turn accused of wearing provocative dresses and also of inventing the story in order to obtain some benefits, but that the success of their complaint largely depends on the position held by the perpetrator of the harassment: if he is a co-worker, he will likely be transferred or fired; if the sexual aggressor is a boss, then it will be the woman to face dire consequences. Finally, *Table 2.4* reports that among the within the group of women that are hit by sexual harassment, the age group more at risk is that of women between 19-25. This is due to the fact that they are likely to have just entered the workplace and, thus, they are more vulnerable.

Women workers know that strength is in number, and hence they try to organise trade unions and combat for their common cause. As a worker employed in a Dominican EPZ called Dilena revealed in an interview with ILRF staff, however, things are not that simple. In fact, since “the problems with the old supervisor did not go away [...] my co-workers came up with the idea of forming a labour union because of these and other problems. I, along with my co-workers, was accused of violating company policies, and I was fired.”⁽⁹⁷⁾

⁽⁹⁷⁾ Pantaleón L., “Sexual Harassment in the Export Processing Zones of the Dominican Republic”, Rights for Working Women Campaign, ILRF, 2003, p. 15.

2.5 “DO NOT LISTEN TO AGITATORS AND TROUBLE MAKERS”.

In her world-wide famous book “No Logo”, Naomi Klein reports that she saw a large sign posted at a central intersection in the EPZ of Cavite, in the Philippines. It recited, “DO NOT LISTEN TO AGITATORS AND TROUBLE MAKERS”. She writes that “the word are in English, painted in bright capital letters, and everyone knows what they mean.” Then she points out that “although trade unions are technically legal in the Philippines, there is a widely understood – if unwritten – ‘no union, no strike policy inside the zone’.” Finally, Klein concludes “workers who do attempt to organize unions in their factory are viewed as troublemakers, and often face threats and intimidations.”⁽⁹⁸⁾

“No Logo” was published in 2000. Thirteen years later, nevertheless, respect for freedom of association and the right to collective bargaining (ILO Conventions No. 87 and 98) still constitute some of the major legal and practical concerns in EPZs. As it shall be seen below, despite their status of fundamental rights, unions, NGOs and labour inspectors continue to uncover workers who are being denied their rights to collective bargaining and freedom of association. Among the issues denounced, it is almost the norm finding:

- restrictions on unionisation and union membership;
- interference in the internal affairs of workers’ organisations;
- refusal to negotiate;
- harassment;
- violence and reprisals;

⁽⁹⁸⁾ Klein N., *No Logo*, New York, Picador, 2000, pp. 212-213.

- legal restrictions on industrial action (including prohibition by classifying EPZ as essential services, and exemptions and ambiguities on the application of labour law);
- access to zones.⁽⁹⁹⁾

There are also cases, like Sri Lanka, in which employees set up councils or committees in order to deter the creation of free and independent unions. Furthermore, it is not unusual that EPZ employers act in conformity with local labour law. However, this does not automatically imply that they are in compliance with international CLS. The law applied in the zones, indeed, is very often in violation of the internationally recognised rights of freedom of association and collective bargaining. The fact is that governments of developing countries have been generally circumspect in enforcing labour laws and safeguarding union rights in the EPZ basically because they fear of losing significant FDI. It goes without saying that such countries – relying on exports of labour-intensive manufactures with the goal of generating the longed foreign exchange – cannot afford the risk of undermine the competitiveness of the export sectors. And even if they were willing to implement proactive labour laws, they would lack the resources to put them into effect, being constrained in terms of budget expenditure by market reforms.⁽¹⁰⁰⁾ As a consequence, workers in developing countries lose the

⁽⁹⁹⁾ Pérez H., “Good practices in labour inspection in Export Processing Zones”, Geneva, ILO, 2012, p. 11; *see also* Gopalakrishnan R., *Freedom of association and collective bargaining in export processing zones: Role of the ILO supervisory mechanisms*, Geneva, ILO, 2007.

⁽¹⁰⁰⁾ In “Decent Work. Country profile: Bangladesh” (Geneva, ILO, 2013, p.2), for instance, it is reported: “The CEACR has found that the ineffectiveness of the DIFE [Department of Inspection for Factories and Establishments] could largely be attributed to an insufficient budget, shortage of trained enforcement officials, lack of logistical support, inadequate sanctions for non-compliance with the law and lack of training for inspectors and requested that the Government identify the body responsible body for labour

crucial *media* for improving their own working – and living – conditions.⁽¹⁰¹⁾ Issues relating to the reduction of gender wage gaps, for instance, suffer from the absence of adequate union rights.

With respect to the matter just mentioned, it is not a case that Doraisami, for example, finds in the prohibition of union rights in foreign-owned-export-oriented enterprises the root causes of the persistent gender wage gap in the Malaysian manufacturing sector.⁽¹⁰²⁾ According to her study, women working in export factories find improving their wages extremely difficult, in that the absence of nationwide unions together with the lack of a legally established minimum wage contribute to preserve the *status quo*. In addition, even when new laws in support of union rights in EPZs are issued, they are hardly implemented.

During the 101st Session of the International Labour Conference in 2012, the CEACR requested “the governments concerned to provide information on the exercise in practice of trade union rights in EPZs and *maquilas*,⁽¹⁰³⁾ particularly with regard to the access of the labour inspectorate and representatives of workers’ organizations to these zones”,⁽¹⁰⁴⁾ because in its 2009 report, the Committee “observed with concern that there are significant *lacunae* in the application of Convention No. 87 with respect to workers in

inspection in export-processing zones (EPZs). The Government has recognized that the financing of Bangladesh’s labour administration needs to be improved.”

⁽¹⁰¹⁾ Jansen M. et al., *Trade and Employment: From Myths to Facts*, Geneva, ILO, 2011, p. 189.

⁽¹⁰²⁾ See Doraisami A., “The gender implications of macroeconomic policy and performance in Malaysia”, in Berik G., Rodgers Y., Zammit A., *Social justice and gender equality: Rethinking development strategies and macroeconomic policies*, New York, Routledge, 2008.

⁽¹⁰³⁾ E.g., Bangladesh, Guatemala, Nigeria, Pakistan, Belize, Iceland, Mauritius, Nicaragua, Philippines, Mozambique, and India.

⁽¹⁰⁴⁾ ILO, General Survey on the fundamental Conventions concerning rights at work in light of the ILO Declaration on Social Justice for a Fair Globalization, 2008: *Giving globalization a human face*, International Labour Conference, 101st Session, 2012, Geneva, ILO, 2012, p. 28.

export processing zones”.⁽¹⁰⁵⁾ The CEACR noted a worrying “disparity between *de jure* and *de facto* application of labour standards in EPZs and between EPZ workers and those not working in EPZs”, and deemed “of particular concern when considering the importance of fundamental human rights, in particular equality of treatment, that there is often an extremely high proportion of women among EPZ workers deprived of their rights.”⁽¹⁰⁶⁾

To give an account of the scope of such issue, according to a 2008 InFocus report, in Costa Rica, there is virtually no worker organization and ITUC reveals that the few unionised workers face harassment and unfair dismissal; in Indonesia, restrictions on workers’ rights and anti-union repression abound; and in China, recognised unions have obtained only weak negotiation capacity. In Madagascar, apart from the scarce participation of enterprises in collective agreements and a widespread absence of representatives of staff, what really surprises is the fact that “54 per cent of workers do not know what a collective agreement means”.⁽¹⁰⁷⁾ As mentioned above, Sri Lanka, then, is another case in point:

“(…) the creation in 1994 of employees’ councils, encouraged by employers and the Board of Investment (BOI), hampered the creation of free and independent unions and the exercise of the right to collective bargaining. According to the trade unions, the councils are set up without consultation with unions, are under the control of the BOI and their members are not freely elected. To represent workers in collective bargaining, a union has to represent 40 per cent of the workforce – otherwise the employees’ councils negotiate on their behalf. Trade

⁽¹⁰⁵⁾ CEACR, general observation, Convention No. 87, 2009.

⁽¹⁰⁶⁾ *Ibid.*

⁽¹⁰⁷⁾ Committee on Employment and Social Policy, “Report of the InFocus Initiative on export processing zones (EPZs): Latest trends and policy developments in EPZs”, Geneva, ILO, 2008, parr. 13-14, p. 4.

unions have therefore started to organize within a collective called the Apparel-Industry Labour Rights Movement, which seems to have improved cooperation between trade unions and the employees' councils under certain conditions. Furthermore, Sri Lanka has indicated that a Social Dialogue and Collective Bargaining Unit has been set up within the BOI and that measures have been taken to promote collective bargaining at the EPZ level.”⁽¹⁰⁸⁾

This case is definitely as serious as emblematic. But there is more. For instance, several States allow strikes to be prohibited on the basis of their potential economic consequences “for a period of three years from the date of commencement of production in a new establishment, or an establishment owned by foreigners or established in collaboration with foreigners”;⁽¹⁰⁹⁾ other states ban strikes on the basis of the “potential detriment to public order” or to the national or even general interest (e.g. Philippines and Pakistan); some other states either define essential services too broadly or leave too much discretion to the authorities to unilaterally declare a service essential.⁽¹¹⁰⁾ In

⁽¹⁰⁸⁾ *Ibid.*

⁽¹⁰⁹⁾ For example, addressing to Bangladesh, the CEACR requested “the need to lift several restrictions on the right to strike: requirement for three-quarters of the members of a workers’ organization to consent to a strike (sections 211(1) and 227(c) of the Labour Act); possibility of prohibiting strikes which last more than 30 days (sections 211(3) and 227(c) of the Labour Act); possibility of prohibiting strikes at any time if a strike is considered prejudicial to the national interest (sections 211(3) and 227(c) of the Labour Act) or involves a public utility service including the generation, production, manufacture, or supply of gas and oil to the public, as well as railways, airways, road and river transport, ports and banking (sections 211(4) and 227(c) of the Labour Act); prohibition of strikes for a period of three years from the date of commencement of production in a new establishment, or an establishment owned by foreigners or established in collaboration with foreigners (sections 211(8) and 227(c) of the Labour Act); penalties of imprisonment for participation in – or instigation to take part in unlawful industrial action or go-slow (sections 196(2)(e) and 291, 294–296 of the Labour Act)”. CEACR, “Report of the Committee of Experts on the Application of Conventions and Recommendations”, International Labour Conference, 99th Session (2010), Geneva, ILO, 2010, p. 66.

⁽¹¹⁰⁾ “When examining concrete cases, the ILO supervisory bodies have considered that it should be possible for strikes to be organized by workers in both the public and private

general, the way governments deal with strikes varies to a great extent. However, in many cases the provisions taken with regards to EPZs (both specifically or indirectly) are definitely incompatible with the principles safeguarding the rights of non-discrimination that must prevail in the implementation of the Convention. There are instances, such as Turkey, in which the determination of essential services is the outcome of a joint decision by the parties through an agreement between the social partners: it has therefore been noted with satisfaction by the CEACR “the repeal in said Country of the provision under which compulsory arbitration was imposed for a ten-year period in EPZs for the settlement of collective labour disputes”;⁽¹¹¹⁾ at the same time, the Committee has also welcomed another case of interesting progress, the repeal in Namibia “of the provision which prohibited any employee from taking action by calling, or participating in a strike in an EPZ, under the threat of a disciplinary penalty or dismissal”.⁽¹¹²⁾ Another positive measure for the promotion of collective bargaining has been the prohibition of “unfair practices and the guarantee of the right of access to the necessary information in all sectors, including EPZs, in Mauritius”.⁽¹¹³⁾

In the wake of these successes, the CEACR systematically requests States to take adequate measures to ensure that investigations are carried out into these violations of the Convention, with the purpose to identify responsibilities and punish those responsible. Of course, the Committee encourages governments to adopt measures to promote the respect, protection and promotion of trade union rights in EPZs, especially with regard to women

sectors in numerous services, including (...) EPZs”. International Labour Conference, 101st Session, 2012, *op. cit.*, p. 55.

⁽¹¹¹⁾ *Ibid.*, p. 58.

⁽¹¹²⁾ *Ibid.*

⁽¹¹³⁾ *Ibid.*, p. 99.

and migrant workers.⁽¹¹⁴⁾ The problem is that while some countries have adopted more effective equal pay or anti-discrimination laws, most continue to deal with equal remuneration issues in the context of the general labour law. Accordingly, the exclusion of certain groups from the scope of employment law (sometimes the scope is also limited in terms of size of the enterprise), including workers in EPZs, often leads to difficulties in the application of Convention No. 100 (Equal Remuneration Convention, 1951).⁽¹¹⁵⁾

Several countries have indicated that they are in the process of taking legislative measures to give effect to the recommendations of the supervisory bodies. For instance, Pakistan and Nigeria have announced that they are in the process of taking legislative action to safeguard freedom of association to zone workers. Mauritius has affirmed its commitment in taking legal measures to strengthen collective bargaining processes at the enterprise level. Costa Rica has declared that it is in the process of amending its Labour Code, in order to grant a quick investigation procedure into complaints of anti-union discrimination.⁽¹¹⁶⁾

Despite these encouraging progresses, the collective bargaining and sound tripartite relations in EPZs still continue to be rare and difficult, showing that the overall situation has not changed much since the 1998 Tripartite Meeting of Export Processing Zones-Operating Countries. Although social dialogue covers an important role in improving productivity and workplace conditions through developing mechanism for communication,

⁽¹¹⁴⁾ *Ibid.*, p. 78.

⁽¹¹⁵⁾ *Ibid.*, p. 277.

⁽¹¹⁶⁾ ILO Committee on Employment and Social Policy, *op. cit.*, par. 15, p. 4.

consultation and negotiation,⁽¹¹⁷⁾ unionisation levels are generally insufficient and social dialogue itself has proved to be almost non-existent, particularly among women. On the one hand, this may be attributed to a traditional attitude among male union leaders in not considering women's issues a priority, forcing them to join other organisations or increasing their isolation; on the other hand, women may simply not have the necessary time for union activity, given (as we have previously observed) that their new role as breadwinners is added to their traditional domestic responsibilities. Most of the times, however, unions in general are simply denied access to be active in EPZs, thus limiting the very scope for organising. As the emblematic case of Sri Lanka highlights, employer hostility and alternative organisations or associations created by employers discourage unions, as well as prevent collective bargaining from taking effect. "Greed is good", after all.

2.6 Working time, Health and Safety.

Hours of work in EPZs tend to vary to a great extent, but the common denominator is that shifts are extremely long and often in violation of national law (not to mention international labour standards). For instance, according to Jayaweera, in Sri Lanka workers happen to be forced to do mandatory overtime shifts, clearly breaking the law.⁽¹¹⁸⁾ It is curious to note that ILO had found in the same country a management of a zone enterprise that offered free breakfast to any employee who came early enough to eat it, in order to encourage punctuality in the mornings and to overcome a steady decline in

⁽¹¹⁷⁾ See Nonaka, Takeuchi and Lipparini's studies on the matter in Hinna A., *Gestire e organizzare nel terzo settore: Soggetti, strategie, strumenti*, Urbino, Carocci Faber, 2008.

⁽¹¹⁸⁾ This and the examples that follow are a series of studies reported in Milberg W. and Amengual M., *op. cit.*

productivity as the shift progressed. Long distances for workers to reach their factories, unreliable transport services and other factors, indeed, increase the stress and the fatigue caused by exhausting working shifts. In Madagascar, zone workers are generally found to work longer hours than the equivalent employment located outside the EPZs, and in Cambodia most of the contractors do not observe exceptional overtime regulations. The apparel sector in Chinese EPZs puts into evidence that there is an undeniable relation between low wages and excessive overtime, because employers often pay illegally low wages. Nevertheless, workers do more than the hours they would like or need to do, because employers require overtime work anyway. Furthermore, excessive overtime is tied to the nature of many factories in EPZs, in that those operative in the apparel sector, given that they have to face seasonal demand peaks and rigid shipping deadlines. For its own logic, excessive working time in EPZs appears to be very difficult to monitor, although technological advancement in production system – if used correctly – may turn out to be helpful in reducing extensive overtime shifts.

With regards to issues related to health and safety in EPZs – as it has been stressed while discussing the plague of sexual harassment – it should be pointed out that trends are definitely not clear. However, it is possible to say that many workplaces fail to provide safe environments. Health and safety conditions in EPZs are often poor and much effort ought to be directed towards such matters. Trade unions, for instance, have denounced workers being locked in Bangladeshi factories that caught on fire on different occasions, or the out-dated working machinery provided in Mexican *maquiladoras*.⁽¹¹⁹⁾ Surprisingly, there are some comforting realities, too. In the Dominican Republic, women workers in EPZs who have household responsibilities benefit of higher rates of hospitalisation than workers outside

⁽¹¹⁹⁾ *Ibid.*

the EPZs; and the ILO's Better Factories Cambodia has given consistent help in helping factories to implement the health and safety suggestions provided by inspectors. Although it is evident that concerns in matter of health and safety are far from being resolved, some positive experiences, as the two just mentioned, demonstrate that progress in this field not only must be done, but it is actually possible.

2.7 Obstacles.

In the light of the foregoing, the main obstacle in improving working conditions in EPZs is, without any doubt, a too weak enforcement of legislation, in that many countries have ratified the ILO's CLS, including those relating to equal remuneration and non-discrimination at work (*see Annex I*), and present national laws that are consistent with those Conventions. It has been discussed how the governments of many developing countries lack either the resources or, worse, the will to support their own labour laws to combat gender discrimination and ensure workers greater bargaining faculty. In fact, EPZs are some sort of "secluded islands" established by governments with the deliberate intent of not complying with national labour laws. Given the absence of an international standard that might prevent governments from putting into effect just a part of their national labour laws, there is very poor incentive for individual countries to reform the EPZ system as we have known it until today. Here the ILO is called in taking the reins and setting new useful conventions and standards, because in such a political-economic context only a concerted international effort for a broader set of ILO Conventions could proactively defend union rights. If international mechanisms work to support developing-country

workers' to organise and collectively bargain, the latter will be able to push for improvement in working conditions, which, in turn, would help countries to enforce labour standards.

2.8 Moralised business: Greed is bad.

As of today, it is safe to say the international community has three concrete options to not only promote, but also implement decent working conditions in sectors concerning trade. Firstly, the Western world in the form of EU and US may promote union rights in developing-country trading partners through social clauses in regional or bilateral trade agreements. However, this *medium* might lack of effective enforcement mechanisms, also because of logical controversies. In the second place, after the 1999 re-invigorating initiative of “Decent Work”, the ILO’s tripartite mechanism surely constitutes a pressure point at the national level that can be strengthened by increasing capacity for enforcement of national legislation. The third possible option lies in the CSR approach through the so-called “codes of conduct”. Despite this approach has been extensively adopted by firms, it did not prove to be very resolute. Apart from setting some auto-defined corporate goals, in fact, codes of conduct, for their own nature, do not emphasize union rights nor make significant improvements for workers.

Since the mid-1990s, the private sector has played an active role in regulating and supervising its supply chains through the adoption of said codes of conduct and assessing its principles. However, these voluntary initiatives – which are to be welcomed and encouraged – should not be viewed as an alternative to the first two options that have been considered, i.e. public regulation and supervision. That said, a failure of the private sector to

adopt an active role and assume responsibility for some of the pivotal changes that its presence inevitably entails could only be seen as a huge opportunity being thrown away. There are so many different types of institutions ranging from companies to non-profits, from trade unions to trade associations, just to name a few, which have conceived and developed such a vast galaxy of self-regulatory initiatives in the form of codes of conduct and methodologies to monitor and certify companies compliance with voluntary codes, that it would be really pointless if they are to be discarded because not valued and encouraged enough. Clearly, these initiatives can in no way replace CLS or national legislations. But they undoubtedly can strengthen the very same observance and application of CLS and national legislations. Regardless of the infinite argument whether the transparency, independence and credibility of these initiatives, a spontaneous concerted effort of the private sector and the civil society in assuming responsibilities and in investing resources to ensure that the effects of globalisation positively affect all sectors of society, is only to be welcomed. And hopefully it will shed light on the dark side of EPZs, too.

Chapter Three: ANGOLA, THE GAME-CHANGER?

Case study: ZEE Luanda-Bengo E.P.

CONTENTS: 3.1 EPZs in Africa. – 3.2 Africa’s happiest country. – 3.3 The keyword is “diversification”. – 3.4 Why the SEZ typology? – 3.4.1 Decreto n.º 50/09 de 11 de Setembro e Decreto n.º 57/09 de 13 de Outubro: “uma empresa pública de grande dimensão”. – 3.4.2 Decreto Presidencial n.º 49/11 de 9 de Março: Regime Jurídico da Zona Económica Especial Luanda-Bengo E.P.. – 3.4.3 Lei do Investimento Privado n.º 20/11 de 20 de Maio. – 3.5 Angola, the game changer?

Nowadays, the development of the African continent relies more on the possibility of doing business than on the old logic of charity. Studies, reports, evaluations of the major research institutions agree that Africa is actually changing and is ever improving the use of its resources to stake a claim to space on this new millennium. In all the countries that are being the driving force behind the development of the Continent, the current financial and economic crisis in the Western world does not appear to find much space and is not really impacting on the pace of growth. Undoubtedly, Africa is striving hard to grow; yet, developed countries still seem to show some reticence. The African continent, however, is seeking equal partners and, hopefully, there shall be no more room for those who see Africa as a place to go to take advantage of: the Africa of today longs for cooperation, sustainability and well-being. Now, may EPZs represent a clever solution to this perspective? It is then worth considering the role that they have played in Africa.

3.1 EPZs in Africa.

According to the African Center for Economic Transformation (ACET), African EPZs have been characterised by a slowdown in growth across investment, export and employment, rather than moving to an exponential growth path.⁽¹²⁰⁾ As it has been shown in the first part of this dissertation, the centre of labour-intensive global manufacturing in the past four decades has been the Asian continent. Still, Africa does certainly lack some of the resources (or advantages, according to the point of view) that have transformed Asia into the hub of international manufacturing, low-cost labour in particular. But if the African countries have generally not seen the fruits of such a transformation the blame is to be put on their governments, because the EPZ concept is without any doubt a strategic medium for the realisation of a manufacturing boom. In sum, although there are several EPZs across Africa, it is safe to say that they surely have not been a “game-changer” to date.

In the 1990s, a flood of EPZs legislation came to Africa as countries attempted to imitate the East-Asian model of export-led industrialisation. The result is that, as of today, there are over 90 EPZs in the sub-Saharan Africa,⁽¹²¹⁾ with the most recent estimates accounting for 1.043.186 employees in a total of twenty countries.⁽¹²²⁾ For their inner logic, they offer the same varieties of incentives that all the other zones worldwide do, such as import-export duty exemptions, simplified customs and administrative controls and procedures, liberal foreign exchange policies, not to mention income tax incentives. In other words, the formula always remains the same:

⁽¹²⁰⁾ “West Africa Trends”, June 2012 issue, a newsletter for the Rockefeller Foundation prepared by the ACET, available at <http://acetforafrica.org/whats-new/post/africas-export-processing-zones-its-time-to-lift-the-game/>.

⁽¹²¹⁾ Millberg and Amengual, *op. cit.*, p. 4.

⁽¹²²⁾ See n.120.

to increase the economy's competitiveness by reducing business entry and operating costs. This "generosity" aims at supporting what are considered as the pivotal points to set the path towards a successful export-led growth. In addition to the traditional economic activities that take place within EPZs (garment production and assembling of electronic and light electrical goods), ACET reports that, recently, African EPZs have also undertaken the development of food processing activities, the production of optical goods, leather footwear, clothing, watches, toys, furniture and services. If this may be interpreted as a quite encouraging picture, it should also be seen what there is on the other side of the coin.

In Western Africa, almost all the countries have embraced EPZs as a strategy to attract FDI or export-oriented manufacturing, and - in a few countries - progress is clearly visible. For instance, Ghana's zone programme may be deemed successful in part thanks to cocoa processing activities, and in part thanks to a variety of other exports,⁽¹²³⁾ and in Togo, the enterprises in the zones employ more than half of the national secondary sector: about 60 companies employing some 9.000 workers (60 per cent of which are women).⁽¹²⁴⁾ It cannot be denied that some success has been recorded. Nevertheless, this success fades when compared with the EPZs outcomes of Asia (and of Central America, too). It is a fact that most African countries have failed – even though not completely, maybe – to develop a sound EPZ strategy in the view of kick-starting the industry and, consequently, diversifying economy, and this is proved by the almost insignificant change in their export structure: absolute and per capita exports in West African EPZs are even 10-15 times smaller than in other zones worldwide. This means that

⁽¹²³⁾ See note 120.

⁽¹²⁴⁾ International Trade Union Confederation, *2011 Annual Survey of violations of trade union rights - Togo*, 8 June 2011, available at <<http://www.refworld.org/docid/4ea661dec.html>>

they are basically failing to shift to the typical remarkable growth process that occurs between after five or ten years of operation. What is worse, some zones are even undergoing a decline in growth. Therefore, it is inevitable that such zones experience a very low density of firms in respect to those in other emerging markets. Despite the Region's comparative advantage in growing cotton together with the preferential access to markets under the African Growth and Opportunity Act (AGOA) and the Everything But Arms (EBA) initiative,⁽¹²⁵⁾ the garment sector, for instance, demonstrates that the West African EPZs are comparatively limited in labour-intensive area (e.g., Burkina Faso, Africa's leading cotton producer, exports over 90 per cent of it in raw form).

The Togolese case seems to suggest that the problem is that very few EPZs offer good quality job opportunities and the prospect to better off the initial working position. More than two-thirds of its zone workers, indeed, have temporary status and the right to unionisation, which is guaranteed by the national labour code, is not enforced. This may be explained by the fact that workers employed in equivalent businesses outside Togo's zones are provided with a more appealing pay and that firms operating in the zones still prefer to exploit unskilled labour. At the same time, local entrepreneurs are given little chances to develop solid growth strategies, since the major

⁽¹²⁵⁾ "AGOA builds on existing US trade programs by expanding the (duty-free) benefits previously available only under the country's Generalised System of Preferences (GSP) program. Duty-free access to the U.S. market under the combined AGOA/GSP program stands at approximately 7,000 product tariff lines, including the roughly 1,800 tariff lines that were added (to the GSP pool) by the AGOA legislation. Notably, these newly added 'AGOA products' include items such as apparel and footwear, wine, certain motor vehicle components, a variety of agricultural products, chemicals, steel and many others." [\[http://agoa.info/about-agoa.html\]](http://agoa.info/about-agoa.html)

"Tailor-made to the specific needs of least developed countries, the EU's 'Everything But Arms' arrangement (EBA) was born in 2001 to give all LDCs full duty free and quota-free access to the EU for all their exports with the exception of arms and armaments. This makes it the most generous form of preferential treatment to LDCs globally." [\[http://trade.ec.europa.eu/doclib/docs/2013/april/tradoc_150983.pdf\]](http://trade.ec.europa.eu/doclib/docs/2013/april/tradoc_150983.pdf)

investors are mostly foreign nationals with limited local participation. In Togo there are thirteen different nationalities doing business in the zones and nationals lead only 29 per cent of the companies.⁽¹²⁶⁾ As a consequence, some analysts have started to wonder whether EPZs are bringing any significant benefit for local economies, particularly when weighing the enormous cost of infrastructure and incentives, which imply potential revenue losses from concessions on income taxes and tariffs. If the number of jobs created and the net foreign earnings do not meet the expectations, the investment undertaken by countries in the Region to promote such zones is as vain as expensive. And like a domino effect, investors may not be so interested in locating in the zones anymore. In Benin, for instance, there are only eight enterprises located in the EPZs out of a total of twenty operating according to the free zones principles. The other twelve are still located outside because some businessmen are refusing to move their enterprises into the zones, due to lack of satisfying standards in the provision of infrastructure.⁽¹²⁷⁾

In the light of the foregoing, Western Africa constitutes an emblematic illustration of a promising but disappointing record in terms of EPZs. Most zones have not managed to succeed because of the combination of such factors as scarce governments' commitment, policy reversals and huge costs needed for the development of infrastructure. Furthermore, it is not to be forgotten the obstacles represented by a slow bureaucracy and widespread non-transparent procedures in accessing incentives, poor location of sites of production, labour difficulties, deficiencies in telecommunications and power supply, and unreliable transportation services. The Dakar Free Zone, for instance, has been seriously affected by mismanagement, poor infrastructure

⁽¹²⁶⁾ "Togo Guide: Doing business and investing in Togo within the framework of OHADA legislation", available at

http://acpbusinessclimate.org/pseef/Documents/Togo_guide_en.pdf.

⁽¹²⁷⁾ See note 120.

and bureaucratic tendencies associated with state-owned enterprises, which brought to a paradoxical over-staffing by authorities with 74 government officials employed when the zone had just one firm established within it.⁽¹²⁸⁾ EPZs may provide low paid and temporary jobs, but still, these jobs are essential for the poor to get some livelihood and they should act as a springboard to a better working world. Therefore, West African governments need to understand that they must ensure skills training and provide greater job benefits in EPZs, devising a strategy that prevents EPZs in the Region from turning into slave labour sweatshops.

In 2001, Watson wondered if Africa had “missed the boat” and came to the conclusion that it was still in time to realise an export-oriented growth based on the development of EPZs.⁽¹²⁹⁾ Over a decade later, ACET says that “EPZs have been poorly managed” and that “it is time for governments to lift up their game”. In this sense, Angola is a perfect case in point.

3.2 Africa’s Happiest Country.

On 25 April 1974 junior officers across Portugal struck against the government and General Spínola was installed as president by the *Movimento das Forças Armadas*, which had carried out a bloodless coup. The priority for the new government was to solve the colonial problem; therefore, Guinea-Bissau was almost immediately granted independence and negotiations began soon for Mozambique and Angola, too. In January 1975, Portugal and all the Angolan liberation movements (which had been fighting for gaining

⁽¹²⁸⁾ *Ibid.*

⁽¹²⁹⁾ See Watson P. L., “Export Processing Zones: Has Africa Missed the Boat? Not Yet!”, Africa Region Working Paper No. 17, The World Bank, 2001.

independence for about two decades) signed the Alvor Agreement, providing full Portuguese withdrawal by 11 November and a transfer of power to a coalition government. Instead of bringing peace, however, independence brought even more war. A war that has been defined as civil war, but that in fact was international, since Angola set one of the main stages for the global Cold War.⁽¹³⁰⁾ And a war that has the sad record of being one of the longest in the current times, ended in August 2002. The effects of civil war and foreign intervention were truly disastrous, because what could have been Africa's richest country was reduced to poverty and hunger, with inexistent public services and infrastructure.

It is surprising that only a decade after the end of the conflict, the UN *World Happiness Report 2013* deems Angola the happiest country of the African continent, ranking 61st.⁽¹³¹⁾ On the other hand, the WB *Doing Business 2013* does not think twice about placing it 172nd out of 185 countries. The Angolan business environment remains still difficult due to the persistent complexity of the bureaucracy, which has been further slowed down by the recent laws on foreign investment and by a biding regulation on the use of the national banking system and local currency for firms. In this regard, UNCTAD data reflect a significant outflow of FDI in recent years. Angola requires 184 days to register a property (to make a comparison, Portugal only one and China five), although it is one of the biggest cost cutters in that respect, slashing the property transfer cost from 11.5 per cent of the property value to 3.2 per cent in 2011. Another reason behind the 172nd position may be the considerable amount of documents necessary to attend the practices in matter of export, which are eleven (whereas in Japan they are

⁽¹³⁰⁾ For more on Angolan Civil War see Westad, *op. cit.*

⁽¹³¹⁾ Helliwell J., Layard R., and Sachs J., "World Happiness Report 2013", United Nations Sustainable Development Solution Network, 2013, available at <http://unsdsn.org/files/2013/09/WorldHappinessReport2013_online.pdf>.

three and in China they are four). This inevitably does not make exporting easy. In addition, Angola is at the very last rankings when it comes to enforcing contracts in terms of procedures, time and cost to resolve a commercial dispute through the courts; it is also one of the countries where it is more difficult to resolve insolvency. Moreover, the local skilled workforce is inadequate in both quantity and quality. The WB *Doing Business*, however, acknowledges the relevant Angolan improvements in making getting electricity easier through the elimination of the requirement for costumers applying for an electricity connection to obtain authorisations from the two utility companies.⁽¹³²⁾

In the light of the foregoing, the brilliant ranking in the *World Happiness Report 2013* may seem - if anything - almost unjustified; at a first sight, even the Human Development Index (HDI; a rank of 148 out of 187 countries) may suggest that there is not much to celebrate. But at a closer look things are different - or, better, coherent. Indeed, Angola's HDI is 0.508, whereas that of Sub-Saharan Africa is 0.475.⁽¹³³⁾ This means that Angola ranks above the regional average; it is not a case that notwithstanding the persistence of those negative aspects mentioned above, foreign companies see in this country a significant development potential and include it among the most attractive markets. In this perspective, the national government requested a workshop organised by the UNCTAD (which took place in Luanda from 30 July to 1 August 2013), with the aim to examine Angola's prospects, opportunities and

⁽¹³²⁾ A better supply of electricity, which remains erratic even in Luanda, is vital if Angola is to continue delivering on its post-war growth plans and non-oil diversification strategy. The eence Unit reports that, currently, most businesses have at least one diesel generator and manufacturing plants often run entirely on generators, greatly increasing the cost of doing business. (21 June 2013: Policy trends)

⁽¹³³⁾ UN Development Programme, Human Development Reports, available at <<http://hdrstats.undp.org/en/countries/profiles/AGO.html>>.

challenges in meeting the current Less Developed Countries (LDC) criteria.⁽¹³⁴⁾

The African country joined the ranks of the LDCs in 1994 on the basis of a UN General Assembly resolution, and since then, it has made tangible progress, especially in economic performance. Between 2000 and 2010, for instance, its GDP grew at an average rate of 11.25 per cent, making it the third-highest performance within the LDC group during that period. It is worth noting that such growth rate is higher than the 7 per cent goal agreed to in the context of the Brussels Programme of Action, which was held as necessary in order to significantly reduce poverty in LDCs. Furthermore, in the same decade, GDP per capita rose from about US\$655 to US\$4.442 per year; as a consequence, Angola has surpassed the US\$1.190 GDP per capita threshold stipulated by the UN for countries to qualify for exiting the LDC category.

But all that glitters is not gold. Angola's impressive economic growth has been driven largely by its export sector, which is based, however, on a single commodity: petroleum. Think that between 2002 and 2011, it accounted for 95 per cent of Angolan total exports (oil output in Angola increased from around 650 thousand barrels per day in 1995 to nearly 2 million in 2010, an 8-per-cent annual growth rate).⁽¹³⁵⁾ It is then safe to affirm that Angola is one of the most undiversified economies in the world. It goes without saying that a sizable shock to the price of the main export commodity (hitting export receipts, budget revenue, and foreign investment in that sector) could create severe pressures in both foreign exchange and domestic financial markets. Not by chance, in 2009, Angola experienced a full-blown economic crisis that

⁽¹³⁴⁾ UNCTAD, "Workshop to focus on Angolan LDC graduation process", 29 July 2013, available at <<http://unctad.org/en/pages/newsdetails.aspx?OriginalVersionID=586>>.

⁽¹³⁵⁾ IMF, *Sub-Saharan Africa: Maintaining Growth in an Uncertain World*, Regional Economic Outlook, 2012, p. 53.

prompted for the stipulation of a 27-month *Stand-By Arrangement* with the IMF in the amount of US\$1.4 billion:

“The IMF-supported economic program approved aims to restore macroeconomic balances and rebuild international reserves. While the immediate goal is to mitigate the repercussions of the adverse terms of trade shocks linked to the global crisis, the program also includes a reform agenda aimed at medium-term structural issues to foster the non-oil sector growth.”⁽¹³⁶⁾

A concentrated pattern of exports together with an almost inexistent buffer in the form of foreign reserves may lead to fatal consequences, such as slowdown in the economy, weakening of fiscal and external positions, depreciation of the exchange rate and a rise in inflation. In other words, in infrastructure and capital scarce economies, the volatility of resources can be particularly damaging because it prevents a sustained realisation of public investment. In terms of meeting the key Millennium Development Goals, for instance, Angola is making slow progress in halving the proportion of its population living in absolute poverty by 2015 (although it has to be acknowledged that it has made tangible progress in combating wide-spread hunger and malnutrition). With that said, it appears clearly evident that the keyword for Angola is *diversification*. Diversification of the economy in Angola is more viable than in other countries thanks to its geographical structure and its population, numerically limited and already highly urbanised, as a result of the conflict. The oil windfall could quickly be invested in each sector (from egg production to the exploitation of minerals) pivoting on a domestic demand set to grow with the development of its population, which is

⁽¹³⁶⁾ “IMF Executive Board Approves US\$1.4 Billion Stand-By Arrangement with Angola”, 23 November 2009, available at <http://www.imf.org/external/pubs/ft/scr/2009/cr09320.pdf>.

only possible through a fairer distribution of wealth.⁽¹³⁷⁾ Then, may the EPZ concept boost this process?

3.3 Keyword: “Diversification”.

On 11 July, the Executive Board of the IMF concluded the 2012 Article IV Consultation and First Post Program Monitoring with Angola.⁽¹³⁸⁾ Momodou Saho, the Alternate Executive Director for Angola, recalled the long-term development strategy *Angola 2025*, which envisions “strengthened public financial management, expansion of physical and economic *infrastructures*, heightened *job creation* and *enhanced quality of life for the population*” in order to “build on sound fiscal and monetary policies as well as *human* and institutional capacity developments which should in turn support the structural transformation and diversification of economy”.

Thus, on the one hand, the Angolan authorities are trying to scale up the proportion of the budget that is allocated to the social sector - also to defuse

⁽¹³⁷⁾ “To help promote the social and economic development of Angola, as well as generating wealth for its people”, since 2012, Angola has its own sovereign wealth fund in order to manage the fiscal surplus resulting from oil profits and invest in long-term programmes, thus becoming the second African country to establish a similar *medium* for public investment after Nigeria. The Fundo Soberano de Angola (FSDEA) counts on US\$ 5 billion, stemming in large part from the diamond and oil resources of the Country. Official sources report that in spite of claims of transparency and a commitment to publish the policy of the fund by March 2013, so far no information about the investment programs has been disseminated. Meanwhile, the Fund is temporarily assigned to a company based in Switzerland, Quantum Global Investment Management, which already operates a significant portfolio on behalf of the Banco Nacional de Angola. The delay was due to legal issues resulting from allegations of irregularities denounced by the opposition in Parliament.

⁽¹³⁸⁾ Under Article IV of the IMF’s Articles of Agreement, the IMF holds bilateral discussions with members, usually every year. A staff team visits the country, collects economic and financial information, and discusses with officials the country’s economic development and policies. On return to headquarters, the staff prepares a report, which forms the basis for discussion by the Executive Board. At the conclusion of the discussion, the Managing Director, as Chairman of the Board, summarises the views of Executive Directors, and this summary is transmitted to country’s authorities.

mounting social tensions. Despite heavy public spending on social programmes and infrastructure, nevertheless, the budget will remain in surplus in 2014-2017, as rising production and prices in the oil and gas sector boost government revenue.⁽¹³⁹⁾ On the other hand, as the economy minister Abraão Pio dos Santos Gourgel said last May, the government plans to privatise more than thirty state-owned companies over the next five years, since Angola is weighed down by a number of loss-making and unaccountable parastatals delivering poor service.⁽¹⁴⁰⁾ At the consultation with the IMF, Saho stated that “the principal engine for growth has to be the private sector”, something that can be enhanced by “further reducing the cost of doing business through streamlined legislation, strengthening the judicial system and simplifying tax compliance.”

3.4 Why the SEZ typology?

In 2009, the Angolan Government created the *Zona Económica Especial Luanda-Bengo* through the *Decreto n.º50/09 de 11 de Setembro*. The premises to the decree-law state that in the context of reconstruction and development of the Country, the Government has been creating mechanisms to promote the modernisation of the real economy and national business. As such, they aim at stimulating entrepreneurship and competitiveness that further the *development of projects of strategic and high potential for growth and innovation*. These measures are expected to have a strong impact on the production of goods and services in order to meet the growing demands of the

⁽¹³⁹⁾ Data based on the country report by the Economist Intelligence Unit generated on 25 June 2013.

⁽¹⁴⁰⁾ *Ibid.*

domestic market as well as incentive exports whilst also yielding job creation and incomes, with the consequent effect of reducing poverty. The key point of these premises is the conclusion:

“A experiência de outros países mostra que, dado o seu carácter competitivo e de inovação, o modelo de organização económica, baseado em zonas económicas especiais constitui um dos mecanismos que melhor concorre para a concretização desse desiderato.”

It is safe to assume that “outros países” stays for China. And with good reasons. First, Chinese SEZs have played a central role in the growth and liberalisation of China’s economy, representing one of the key factors behind regional FDI inflows (*see* 1.4.3). Second, the Chinese presence on the Angolan territory is nothing short of overwhelming.

China is the main foreign partner of Angola. The relations between the two countries exploded soon after the end of the Angolan civil war, when Beijing identified the former Portuguese colony as one strategic partner to meet its growing demand for raw materials. In the period 2004-2012, indeed, the value of bilateral trade has multiplied sharply.

On the one hand, China is the principal market for Angola’s exports – almost entirely consisting of oil, of which Angola is the second largest supplier of Beijing after Saudi Arabia – with a market share that, in 2012, was close to 50 per cent of the total. This figure has been steadily increasing and is boosted by particularly favourable bilateral agreements: their recent renovation has brought a reduction of the ordinary customs duties on Angolan goods from 65 to 95 per cent.⁽¹⁴¹⁾ On the other hand, China is the second

⁽¹⁴¹⁾ AFP, “China grants 95% tariff discount for Angolan exports”, 1 November 2012, available at <<http://www.google.com/hostednews/afp/article/ALeqM5j8KttA0kftB->

largest exporter in the African country, preceded only by Portugal. The strength of the ties between Luanda and Beijing is also demonstrated by the number of Chinese living in Angola (there are about 250.000) and the amount of visas issued by the Angolan Government to Chinese citizens (an average of 116 per day in the second half of 2012).⁽¹⁴²⁾

In 2006, on the occasion of a visit to the Chinese capital, the Angolan long-serving president, José Eduardo dos Santos, epitomised the reason for the success of the partnership between the two countries by “China needs natural resources and Angola wants development”.⁽¹⁴³⁾ But the reasons for the development of this privileged relationship also reside in the particular approach that the Chinese adopt with regards to their economic partners. As is known, the strategy of Beijing is indeed characterised by the absence of policy conditions for the internal affairs of the country with which it relates. This has represented an excellent opportunity to Luanda, which, in exchange for crude oil extracted off its Atlantic coast, has had access to generous credit lines made available by the Chinese government through the Exim Bank. Through this scheme (called "Angola Model"), between 2004 and 2010, the Angolan Government received approximately US\$ 10.5 billion, with which it has funded the post-war reconstruction.⁽¹⁴⁴⁾ Within such a framework, it is not surprising that there have been numerous projects in the field of infrastructure and construction entrusted to Chinese companies, which have thus invaded the African country.

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⁽¹⁴²⁾ Redvers L., “Resilience and reconstruction” in *Outlook*, a supplement to “The Africa Report” (issue no. 45), November 2012, p.7.

⁽¹⁴³⁾ “Angola. Angola President José Eduardo dos Santos Handbook: Strategic information and developments” (Vol. I), Washington DC, International Business Publications, 2011, p. 176.

⁽¹⁴⁴⁾ Corkin L., *China and Angola: Strategic partnership or marriage of convenience?* in “Angola Brief”, Vol. I, No. 1, Chr. Michelsen Institute, January 2011, p. 2.

The financial flows between Angola and China are not limited to the channels directly controlled from the public sphere: substantial resources have flocked in the African country through the China International Fund (CIF), a private equity fund based in Hong Kong, whose funds have funded a number of major infrastructure projects (including, for instance, the restructuring of the railway linking the port of Lobito to the Angolan hinterland).⁽¹⁴⁵⁾ However, civil opposition to Chinese involvement in the country is growing as discontent rises over the influx of Chinese immigrants and the quality of Chinese construction.⁽¹⁴⁶⁾

With that said, it is therefore interesting to see if the Angolan case shall reconcile the success of the EPZ model as an engine of FDI with the EPZ model as an instrument of social development.

3.4.1 *Decreto n.º 50/09 de 11 de Setembro e Decreto n.º 57/09 de 13 de Outubro: “uma empresa pública de grande dimensão”.*

Of course, the *ZEE Luanda-Bengo* will easily have an edge over many other EPZs built in previous decades, and the reason is simple: being legally established just four years ago (as mentioned above, in 2009), said zone is designed to meet the latest standards of production and logistical support demanded by international investors.

The *ZEE* is located in strategic sites between the municipalities of Viana and Cacuaco, in the province of Luanda, and in the municipalities of Icolo-e-Bengo, Dande, Ambriz and Nambuangongo, in the province of Bengo

⁽¹⁴⁵⁾McClelland C., “Angola Restore Copper Line After Four-Decade Halt”, Bloomberg, 25 March 2013, available at <<http://www.bloomberg.com/news/2013-03-21/angola-restore-copper-rail-line-after-four-decade-halt.html>>.

⁽¹⁴⁶⁾The Economist Intelligence Unit.

(Decree-law no. 50/09 of 11 September, art. 3). It seeks to harness the potential of one the most densely populated regions of the Country, which consequently constitutes a larger market as well as it offers better logistical conditions. The article 2 of the decree establishing the *ZEE* provides that:

“A *ZEE* – Zona Económica Especial Luanda-Bengo é um *espaço económico fisicamente demarcado, dotado de infraestruturas viárias, fundiárias, económicas e administrativas adequadas aos propósitos* de competitividade, inovação, fomento intensivo da produção, criação de empregos, beneficiando, em termos fiscais, de um estatuto especial.”

The centre of the zone, which is located in Viana and covers an area of more than 8.300 hectares, consists of four integrated structures: as the *figure 1 and 2* illustrate, the first includes the administrative pole and some factories; the second is dedicated to industrial plants; the third and the fourth are being prepared for the expansion phase of the project, which plans the installation of steel and agro-industrial units. However, this is just the core of the *ZEE* (as it is partially possible to see from the *figure 3*). The *ZEE*, in fact, comprises other seven industrial reserves, six agricultural reserves, and eight mining reserves. Think that even the ensuing decree on the zone (*Decreto n.º 57/09 de 13 de Outubro*, art. 2) states that “A Zona Económica Especial Luanda-Bengo-E.P. é uma empresa pública de grande dimensão.”

The *ZEE* is a legal entity having juridical personality and patrimonial autonomy, governed by the principles of economic planning, management autonomy, financial autonomy, economic profitability and free association, among others (Decree no. 57/09, Article 2). This is of capital importance, given that - at least on a theoretical level – the juridical status of the *ZEE*

entails that this *person* could be taken to court by, say, labour unions or NGOs providing assistance to workers.

By virtue of Article 6 (1)(2)(3), the *ZEE* may, in furtherance of its objects, establish new businesses and acquire all or part of the capital of the companies incorporated (or to be incorporated); and whether it holds all or the majority of the voting shares of such companies, it provides the coordination, the economic and financial direction, and the business development. The *ZEE* may establish national and foreign forms of association and cooperation most



Figure 1— Source: Angolan Ministry of Economy.

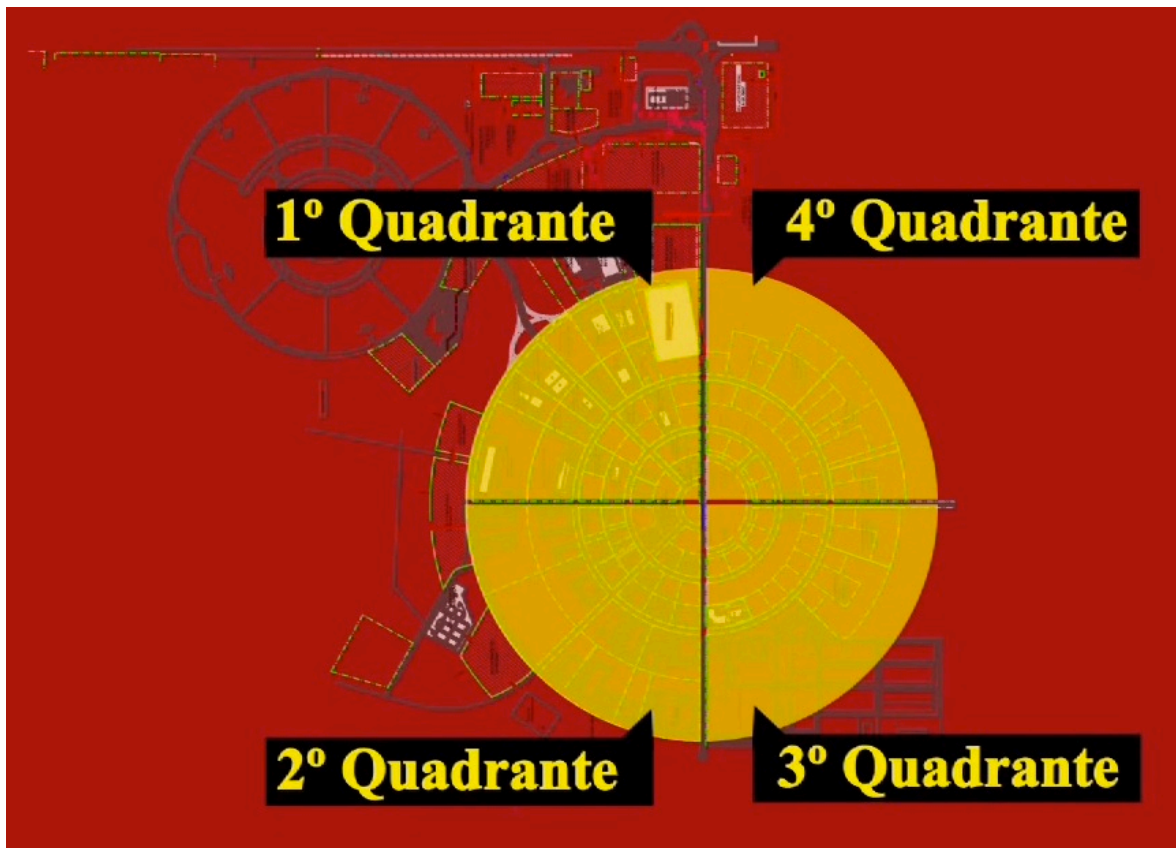
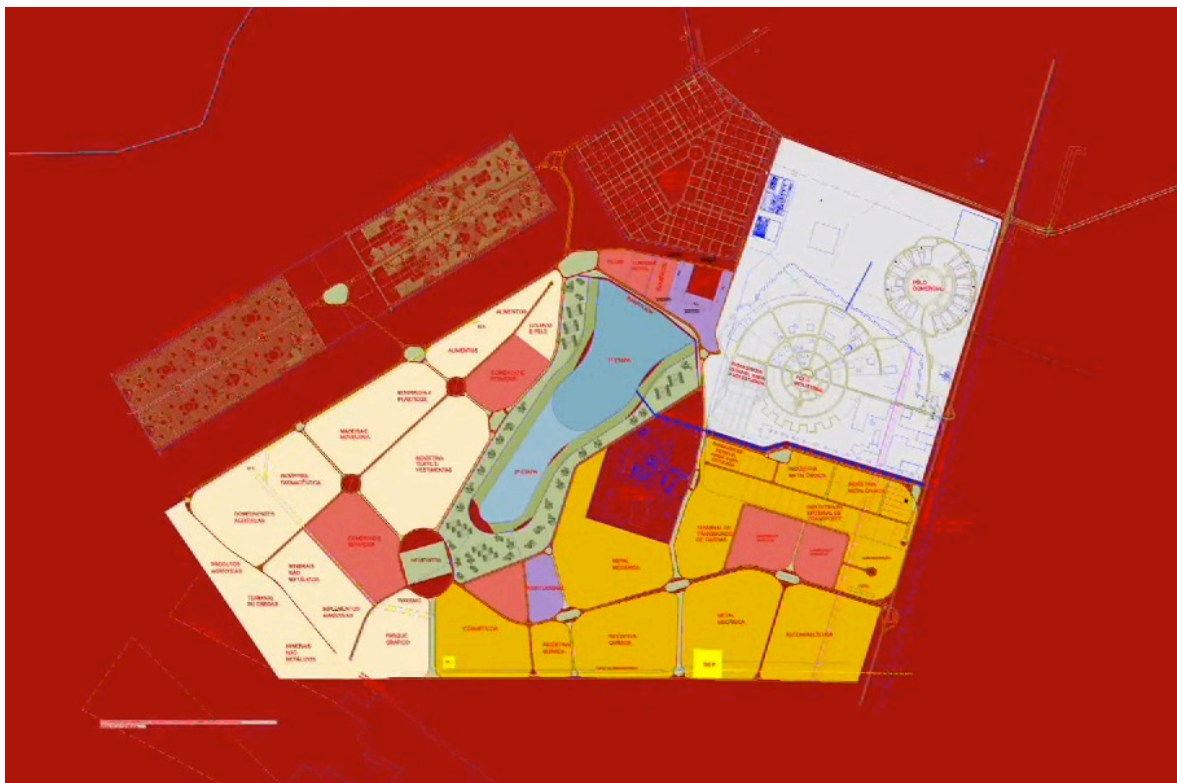


Figure 2 (above) and Figure 3 (below) – Source: Angolan Ministry of Economy.



suitable for the realisation of its purposes, providing that it observes the principles of specialisation and vertical integration. As a consequence, such companies should thus maintain their juridical personality, with all the implications that come with it. In addition, the *ZEE* is the exclusive holder of the management and administration rights of the State assets existing in the special economic zone, whatever their nature, moveable or immovable (Article 10 (1)). This means that such *empresa pública* has the capability to transfer the execution of activities to other companies. In other words, the *ZEE* may contract with third parties to implement all or part of the activities related to the rights that it was endowed with (Article 10 (2)), upon authorisation from the Council of Ministers (Art. 11 (3)).

Under Article 12, the *ZEE* must perform the national development policy in matter of SEZ, in accordance with the laws in force, the Government guidelines, the policy laid down for the sector, and the annual and multi-year budget programmes, all in the interest of the Nation. In particular, the *ZEE* is held accountable for:

- a) proposing plans and programmes to assess the potential utilisation of resources within the SEZ;
- b) guiding and supervising the activities of the companies of which it possesses majority ownership or which are associated with it;
- c) proposing strategic plans for the gradual increase of the technological potential as well as the national financial potential in the management and administration of the zone;
- d) enforcing such guidelines, strategies and plans for the development of the SEZ;
- e) proposing and participating in the implementation of development programmes related to the management and administration of the zone;

- f) tailoring its operations to meet the growing requirements in terms of management and administration as they are defined in national plans.

In order to carry out such tasks, Article 13 (1) provides the *ZEE* with three bodies:

- the *Conselho de Administração*;
- the *Conselho Fiscal*;
- the *Conselho de Direcção*.

The first is the most important body of all. It is responsible for the management of the SEZ and is directly accountable to the Government for the administration of the public company, except for any civil liability of its members that might fall before the constitution of the company or before third parties, and for the criminal liability that they might incur by (Article 13 (2)). The Board of Directors is composed of three or four members appointed by the Council of Ministers, on the proposal of the Ministers of Economy and Finance (Article 14 (1)). Article 15 states that the *Conselho de Administração* has to perform the following duties:

- a) approve the broad outlines and the general strategies to be used for the SEZ, as well as for the companies and associations in which it participates;
- b) approve and submit for approval to the competent organs of the Government the multi-year plans and budgets, and their respective programmes of investments;

- c) approve the annual plans and budgets and their respective programmes of investments;
- d) approve the annual reports and accounts and submit them to the competent authorities;
- e) approve the technical and administrative organisation of the company, internal regulations and other rules governing internal functioning;
- f) approve the prices that the company has to apply, and submit for approval of the competent bodies the price proposals that have to be fixed by higher entities;
- g) approve the establishment of participation in/or association with other companies, as well as the introduction of new activities or the cessation of existing ones;
- h) appoint and dismiss, upon proposal of the Chairman of the Board of Directors, the representatives of the SEZ in the management, administration and supervision bodies of the companies and association in which the *empresa pública* participates;
- i) decide on the contracting of short, medium or long-term loans;
- j) approve the constitution of attorneys endowed with the faculties that it deems appropriate;
- k) submit the approval or authorisation of guardianship to the Minister of Economy and Finance all the measures that shall be approved;
- l) propose to the competent organs of the Government special regimes, subsidies and incentives that shall result necessary for the effective functioning of the activities of the SEZ;
- m) approve the creation or termination of all forms of social representation and definition of their respective powers;

- n) propose an increase of the statutory capital by submitting it to the competent bodies for its approval;⁽¹⁴⁷⁾
- o) approve the acquisition, disposal, or leasing of real estate and assignment of receivables;
- p) negotiate contracts concerning the sale of State assets under its management and administration and propose their approval to the competent authorities;
- q) propose to the competent authorities the maintenance and termination of any business, operations or affairs of the company;
- r) approve the contracting of goods and services not expressly provided for in the approved plans and budgets or that exceed the limits of the delegated powers;
- s) approve the report implementing the plan on the utilisation of the company social fund.
- t) approve the acquisition and disposal of assets and shareholdings when they have not been provided in the approved annual plans and budgets and when they are within the limits established by the regulations of the company;
- u) approved the norms governing the personnel;
- v) manage and perform all the acts regarding the SEZ.

This list of tasks demonstrates the central role played by the *Conselho de Administração* within the zone. The Board usually meets once a month (Article 20 (1)) and, among other things, it is relevant to add that by virtue of Article 19, its president has the faculty to hire and dismiss employees and also

⁽¹⁴⁷⁾ By virtue of Article 3 of the *Decreto n.º 57/09 de 13 de Outubro*, the statutory capital of the ZEE Luanda-Bengo E.P. is of Kz 78.000.000,00 (approximately US\$ 806.790,62).

to exercise disciplinary power in the SEZ. Finally, it is worth noting that Article 38 states:

“O Conselho de Administração da empresa na sua gestão financeira obedece aos princípios de *rentabilidade e crescimento económico*, adoptando as políticas, métodos e práticas que melhor se adequem à prossecução dos objectivos preconizados e à harmonização das políticas económicas e *sociais* do Estado, a *uma sã e prudente gestão empresarial dentro dos parâmetros geralmente aceites e internacionalmente utilizados nas actividades e negócios desenvolvidos pela empresa.*”

Such article is of paramount importance because it shows how the *ZEE Luanda-Bengo* marks a clear difference with respect to the vast majority of the other EPZs scattered around the world, and it does it on two levels: the first is in the way it was designed (as it has previously been highlighted); the second is in the principles with which this zone has been conceived. The first half of Article 38, indeed, states that the Board complies with the precepts of profitability and economic growth; but then, in the second half, it specifies that it should harmonise the economic policies of the State with its social policies, and this shall be done through a sound and prudent business management within parameters generally accepted and internationally employed.

The second body of the *ZEE* is the *Conselho Fiscal*, which is the organ that supervises the company's activity and functioning. Article 23 provides that it consists of three members (of which one is the president) appointed by joint order of the Ministers of Economy and Finance, and, if necessary, they can be assisted by external auditors (Article 25). However, there are some restrictions in matter of access to such body. In fact, it may not be appointed

member of the Supervisory Board: who covers management functions in companies of which the *ZEE* holds voting shares; who are provided services paid to the company on a permanent basis; who perform duties in the management of companies, or competing companies or associated companies; who is interdict, unqualified, insolvent, bankrupt or inhibited from the exercise of public offices; finally, spouses or relatives the persons prohibited before (Article 30). It goes without saying that this is another evidence of common sense that has not simply stayed as such, but that has assumed legal form. Indeed, the members of the company in general may not vote on matters that present conflict of interest with the company (Article 36).

According to Article 24, the *Conselho Fiscal* is entrusted with the following tasks:

- a) supervise the administration and the enforcement of regulations governing the activity of the company;
- b) certify the assets belonging to the company or held by it as collateral or deposit;
- c) examine the accounting and verify whether the valuation criteria adopted by the company lead to a correct assessment of assets and profits;
- d) issue opinions on the documents of the company accountability, notably the report and the financial statements;
- e) inform the competent bodies about irregularities;
- f) comment on any subject of interest to the company;
- g) request through its Chairman to hold meetings of the *Conselho de Administração* if deemed necessary, stating the reasons for the request.

These tasks appear to be as essential as delicate. In order to perform them at best, Article 27 explicitly requires the *Conselho Fiscal* to:

- a) carry out a conscientious and impartial supervising;
- b) keep under secret the facts known by reason of its functions or because of its functions, except for the obligation to inform the authorities about unlawful acts;
- c) inform the *Conselho de Administração* on all the checks, inspections and endeavours performed and on their finding;
- d) inform the Ministry of Finance and the body of guardianship over all irregularities and inaccuracies found and on the explanations they have obtained;
- e) attend the meetings of the Board of Directors and participate in joint meetings to which it has been called upon, or in which accounts are to be discussed.

The *Conselho de Direcção* is the advisory body of the *ZEE* and constitutes its third and last organ. By virtue of Article 31(1)(2), the Governing Board includes: the president of the *Conselho de Administração* (who chairs this board, too); the directors; the heads of the various functional areas of the company; and the representatives of the unionised workers of the company. In addition, the *Conselho de Administração* may invite any other employees to attend the meetings of the Board.

Specifically, the *Conselho de Direcção* is a consultative body of the *Conselho de Administração* that ordinarily meets once every six months (Article 33), and it is to be consulted in particular for the drafts on rating policy, framework, assessment, assignment of stimuli, benefits and bonuses, promotion, training and professional development of employees, as well as

other aspects of human resources policy (Article 32). The mandate of the members of the bodies has a length of three years and it is renewable one or more times (Article 34 (1)).

By its very nature, the *ZEE* may take advantage of special arrangements for – among others – hiring labour force, exchange rate, customs and taxation, after approval of the competent authorities (Article 48 (1)). And it is precisely here that the pitfalls hide, as it has been highlighted in the previous chapters. In fact, Article 48 (2) provides that:

“Os regimes especiais previstos [...] *podem sofrer as alterações, emendas e demais modificações que forem julgadas convenientes* no decurso da sua vigência, tendo em conta os superiores interesses da Nação e a crescente eficiência operacional da actividade da empresa.”

Then, Article 49 adds:

- 1) “A Zona Económica Especial Luanda-Bengo-E.P. deve estabelecer com os seus trabalhadores contratos de trabalho nos termos da legislação aplicável e acordos colectivos de trabalho, *tendo em conta as capacidades e necessidades da empresa*, de modo a promover a captação e o constante desenvolvimento dos trabalhadores nacionais.”
- 2) “O quadro de pessoal da Zona Económica Especial Luanda-Bengo-E.P., seus direitos, obrigações, regalias e perspectiva de desenvolvimento técnico-profissional, entre outras questões de política de recursos humanos, *constam de regulamentos próprios*, a aprovar pelo Conselho de Administração.”

There is no doubt that these provisions open to the most different applications, including those that may have potential repercussion on the quality of the protection of workers’ rights. However, Angola has a very

organic labour law (as it shall be explained later in this chapter) and according to data from the ILO, apparently there are no failures in the implementation of – at least – the standard conventions.

The confirmation of what was said in the first chapter, namely, that one of the main reasons behind the establishment of the EPZ is transfer new skills and expertise to local human resources, is Article 50. Article to the latter, indeed, the *ZEE* shall organise and develop professional training in order to raise and adapt the skills of their employees to new techniques and management methods, as well as facilitate internal promotion and the functional mobility of workers. The company must also promote training programmes for workers trainees in the process of integration in the SEZ. In addition, the *ZEE* may promote the formation process by granting scholarships within Angola or abroad. In order to assure the training, the company shall use its own means or resort to, or associate with, qualified external entities, if deemed necessary.

The participation of the workers in the management of the Luanda-Bengo SEZ is granted through their representatives in the Governing Board. The number, form of designation, powers and other issues relating to workers' representatives and their participation in the management of the company are subject to the approval of the Board of Directors and the representatives of the trade union structures existing in the *ZEE* (Article 51).

3.4.2 Decreto Presidencial n.º 49/11 de 9 de Março: Regime Jurídico da Zona Económica Especial Luanda-Bengo E.P..

After the issue of the two decrees that have just been analysed (50/09 and 57/09), in April 2010 began the process of transferring the responsibility from

the National Reconstruction Office to Sonangol, the state-owned oil company. The parties then signed the certificate legalising the acceptance of the assets on 11 October 2010 and the implementation of the Luanda-Bengo SEZ was entrusted to SIIND (Sonangol Investimentos Industriais), which had been established on 7 October. Its mission is to promote, develop and coordinate the management of the industrial projects of Sonangol and its subsidiaries that shall take form within the zone.⁽¹⁴⁸⁾

Thus, being necessary to establish the legal framework applicable to the organization and functioning of the *ZEE* in order to achieve the efficiency and the results of its economic and commercial profitability, as well as to regulate access criteria for the implementation of industrial units, President dos Santos issued the *Decreto Presidencial n.º 49/11 de 9 de Março* establishing the “regime jurídico da Zona Económica Especial Luanda-Bengo”.

First of all, such decree reiterates in its premises the reasons behind the creation of the SEZ. In fact, it is remarked within the context of the reconstruction process of the Country, it is important to create mechanisms that contribute to the modernisation and sustainable growth of the economy, with direct effects on social development and poverty reduction. According to the text of the *decreto*, the SEZ are deemed to be a model of economic organisation and a powerful engine of industrialisation and development of the manufacturing and entrepreneurial sectors. Hence, the premises confirm that the Luanda-Bengo SEZ has been created with the purpose to promote the production of goods and services, in order to meet the growing needs of the domestic market and boost the exports, start a diversification of the economy, generate jobs and revenues, and to foster the Angolan business sector.

However, the *Decreto Presidencial n.º 49/11* contains more accurate provisions on how the SEZ must operate compared to the previous decrees, so

⁽¹⁴⁸⁾ Sonangol, “Sonangol Notícias”, magazine, issue no. 27, September 2012, p. 22.

as to achieve its goals. Article 5 (2) states that the zone is organised in three development hubs for the following sectors:

- trade and services;
- processing industry;
- agriculture and livestock industry.

With regard to the last sector in the list, it is worth to mention that, according to data from the Food and Agriculture Organization of the United Nations (FAO), Angola is in the sixteenth place among the countries with higher agricultural potential.⁽¹⁴⁹⁾ Yet "it is presently not self-sufficient and all crops have declined to near insignificance as a mere 10 percent of the arable land is cultivated", reads a report of the African Development Bank.⁽¹⁵⁰⁾ Therefore, the fact that the agricultural sector is included within the operational hubs of the *ZEE* confirms the strategic role that the EPZs may play in the socio-economical growth of Angola. Article 6 (2) precisely states that the *ZEE* aims to:

⁽¹⁴⁹⁾ "In July 2012, a Southern African Development Community (SADC) Summit projected a regional grains deficit in 2012, including the first maize deficit since 2006/07, owing largely to poor rainfall. Only four SADC countries show significant overall surpluses in maize (Malawi, South Africa, Tanzania, Zambia). Zambia is projecting the largest maize surplus, but it would not suffice to cover the deficits elsewhere in the SADC region; moreover, since that assessment was made, Zambia has been revising up its targets for building up its own reserves. On balance, and including zones with chronic food security problems, the summit estimated that about 5.5 million people would be at risk of food insecurity in the SADC region, mainly in parts of Angola, the Democratic Republic of the Congo, Lesotho, Malawi, and Zimbabwe." See note 135, p. 12.

⁽¹⁵⁰⁾ African Development Bank, "Angola: 2011-2015 Country Strategy Paper & 2010 Country Portfolio Performance Review", 2011, p.4, available at <http://www.afdb.org/fileadmin/uploads/afdb/Documents/Project-and-Operations/ORSB%20Angola%20CSP%202011%20-%202015%20En%20Rev%20Version%2BMemox.pdf>.

- diversify the economic base;
- contribute to the reduction of imports;
- promote exports;
- promote the creation of jobs and added value, as well as opportunities of professional development;
- contribute to the formation and training of national labour force;
- foster the Angolan business;
- promote the technological development of the national industry;
- promote the integration of Angola's supply chains.

To meet these objectives, nevertheless, not all the activities are permitted. In fact, Article 10 (1)(2) provides that the entities eligible to access the SEZ, namely, public authorities, commercial companies and consortia (regardless of domicile), must not engage:

- in the manufacture of explosives, fireworks and military equipment;
- in activities likely to cause significant risks to the environment or to the safety of persons and goods.

In addition to such restrictions, the implementation of industrial units in the *ZEE* is subject to further eligibility criteria laid down in Article 11 (1)(2)(3), notably:

- a) fitting within the operational framework of the three development poles of the zone;
- b) usefulness of the entrepreneurial project proposed and creation of capital profit for the socio-economic development of the Country;

- c) involvement and qualification of domestic workforce;⁽¹⁵¹⁾
- d) use of raw materials, goods and other secondary materials of domestic origin.

Besides, the implementation of additional units in the processing and agricultural industries is limited by additional criteria, such as: demonstrated feasibility of the distribution channels and marketing of the products manufactured; utilisation of modern and efficient technologies and production processes; and adoption of environmentally friendly practices with a view, *inter alia*, to the protection of the environment, the reduction of pollution levels, and rational use of water and energy. Of course, the most relevant factors in the determining the access to the SEZ are the size of the project in question in terms of production levels and job creation, as well as the potential leverage of other sectors of the domestic economy benefiting from the increase in the value of the final products.

By virtue of Article 7 (2), the organisation of the *ZEE*, including its economic and commercial profitability, lies within the competence of the *Entidade Gestora* (SIIND, as previously pointed out). The Managing Body, indeed, acts as the holder of the exclusive right of administration and management of the entire State assets existing in the SEZ. Among the issues that fall within its remit, it is worth mentioning the design, construction, operation, conservation and maintenance of infrastructures; the realisation of urbanisation projects; and the guidance and monitoring of the activities of the operating companies, entailing the adoption of corrective measures in case of any irregularities (Article 9 (2)). However, Article 22 (1)(2) provides that in the case of business proposals presented by foreign entities, the *Entidade*

⁽¹⁵¹⁾ Article 14 (1) expressly requires that the business proposal must be accompanied by a plan for training Angolan personnel and substituting foreign workforce.

Gestora shall remit the respective procedure to the Agência Nacional para o Investimento Privado (ANIP), which is the competent authority for the examination of their admissibility. If authorised, the foreign entities fall under the legal framework provided by the Private Investment Law (which was reformed and issued two months after the *Decreto Presidencial n.º 49/11*).

The zone-operating companies, which defined by the Decree “Empresas de Exploração”, enter a contract with the Managing Body that not only grants them rights (such as making use of the infrastructure and services offered by the *Entidade Gestora*) but it lays down duties, too (Article 26 (1)(2)). In particular, the *Empresas de Exploração* shall:

- a) build industrial units within the scheduled time and in accordance with the technical specifications indicated in the approved business proposal;
- b) comply with the plans for the production, import and export of goods;
- c) comply with the legal obligations which they are subject to;
- d) have coverage against civil liability and multiple-risk insurance on their respective industrial units;
- e) handle with care the *ZEE* infrastructures, equipment and other goods of common use;
- f) maintain their industrial units in good conditions, applying health and safety standards;
- g) provide the Managing Body with information regarding the implementation and administration of their respective industrial units, when requested;
- h) promptly report the occurrence of any situation that may endanger or impair the proper functioning of the SEZ or damage the infrastructures;

- i) not use the industrial units for purposes other than those contractually provided for, nor allow their use by third parties for any reason;
- j) include in advertising campaigns the condition of being a company operating in the *ZEE Luanda-Bengo*;
- k) strictly comply with the regulations and other instruments issued by the *Entidade Gestora*.

In the exercise of their right of ownership and management on the industrial units, the *Empresas de Exploração* are free to buy goods and hire the services necessary for their operation and maintenance. The companies, nevertheless, are required to give preference to goods and services of domestic origin whenever these features the same conditions of quality, delivery time and are not financially higher than 10 per cent compared to the other proposals (Article 29). Moreover, Article 30 adds that the import of raw materials and secondary goods to be used in the production process is prohibited if they are already available on the domestic market.

In addition to the safeguard of the national industry, the Decree aims to protect the national labour force. According to Article 33 (1)(2), indeed, the zone-operating companies are obliged to employ Angolan workers, guaranteeing them the necessary professional training as well as providing them with wages and social conditions compatible with their qualifications, since that any form of discrimination is prohibited. The *Empresas de Exploração* may admit skilled foreign workers, but they have to strictly comply with the training plan presented at the moment of the approval of the business proposal, with a view to the progressive filling of the positions held by the foreigners with Angolan workers.

Of course, companies in the zone enjoy tax and customs incentives both in accordance with the legislation in force and through negotiation with the

Entidade Gestora, which may grant further fiscal and customs incentives, as well as financial support. However, specific incentives may be granted on a case-by-case basis only after that the Managing Body has arranged with the State a set of incentives applicable to the company in question, which should subsequently be fixed in the operating agreement (Article 35 (1)(2)(3)(4)). In case the *Empresas de Exploração* failed to comply with their duties, Article 25 provides that the *Entidade Gestora* has the faculty to impose sanctions, including payment of fines, loss of granted incentives and even sequestration of industrial units.

3.4.3 Lei do Investimento Privado n.º 20/11 de 20 de Maio.

As has been mentioned above, the foreign business entities fall under the legal framework provided by the *Lei n.º 20/11 de 20 de Maio*. The Angolan Private Investment Law was reformed and issued two months after the *Decreto Presidencial n.º 49/11* establishing the juridical regime of the ZEE, and, in part, it deepens and reinforces some of the provisions laid down in the latter. First of all, Article 2 defines *investimento privado* as:

“A utilização no território nacional de capitais, tecnologias e *know how*, bens de equipamento e outros, em projectos económicos determinados, ou a utilização de fundos que se destinam à criação de novas empresas, agrupamentos de empresas ou outra forma de representação social de empresas privadas, nacionais ou estrangeiras, bem como a aquisição da totalidade ou parte de empresas de direito angolano já existentes, com vista à implementação ou continuidade de determinado exercício económico de acordo com o seu objecto social, desde que estes investimentos sejam qualificáveis como tal.”

The main concern among foreign investors is given by Article 3 (1), according to which the minimum private investment amount to US\$1.000.000, so that now only large-scale investment projects are eligible to benefit from the guarantees and rights stated by the new law. Pursuant to the Constitution and the principles that shape the legal, political and economic order of the Country, the Angolan State assures – irrespective of the source of capital – a fair and not arbitrarily discriminatory treatment to societies and companies incorporated and their respective assets, guaranteeing them protection, security, access to judicial bodies and not hindering their management, maintenance and operation (Article 15 (1)).

According to Article 21, the access to incentives and ease of investment transactions is granted to those entities that meet requirements of economic interests, such as carrying out investments in the development hubs of the *ZEE* approved in accordance with the criteria and priorities set by the Executive. At the same time, Article 24 provides that private investors are required to comply with the following duties:

- a) observe the deadlines for the import of capital and the implementation of the investment project, in accordance with the commitments undertaken;
- b) promote the formation and supervision of domestic workforce and boost a progressive *angolanisação* in the managerial and leadership positions, without discrimination of any kind;
- c) not practicing, by act or omission, any acts that constitute racial, gender or physical disability discrimination, nor promoting factors of exclusion on the basis of salary or social status between national workers and expatriates. Angolans should be assigned occupational categories, wages and social benefits equal to those of expatriate

- counterparts who have the same technical and professional qualifications, or have an equivalent academic degree;
- d) pay all the owed taxes and other contributions;
 - e) constitute funds, reserves and make provisions in accordance with the legislation in force;
 - f) implement the chart of accounts and the accounting rules established by the law;
 - g) respect standards for the protection of the environment, in accordance with the Angolan Basic Environment Law and other applicable laws;
 - h) comply with the rules concerning hygiene, safety and protection of workers from occupational diseases, accidents and other eventualities provided for in the social security legislation;
 - i) contract and keep updated insurance policies against accidents and occupational diseases of workers, as well as a liability insurance policy against damages to third parties or to the environment.

In setting the duration of the incentives, it is to be analysed the expected socio-economic impact of the investment, taking into account, *inter alia*, the factors set forth by Article 39, namely:

- net exchange balance;
- number of objectives that the investor shall achieve;
- number of jobs to create and type of training offered to Angolan workers;
- value of the investment;
- volume of goods or services to be produced;

- type of technology to be used;
- firm commitment to reinvestment of proceeds;
- creation of commodity chains.

But what if a company fail to meet the required legal obligations? First of all, Articles 83 and 84 define *transgressão* as wilful or grossly negligent breach of legal obligations to which the investor is liable under the terms of the Private Investment Law or other legislation on private investment. Therefore, the following cases shall be considered transgression:

- use of contributions from abroad for purposes other than those for which they have been authorised;
- acts of trade that fall outside the scope of the authorised project;
- practice of billing that allows the outflow of capital or evade the obligations to which the company or association is subject, namely those of a fiscal nature;
- non-execution of training activities or non-replacement of foreign workers by national workers under the conditions and deadlines set forth in the investment proposal;
- lack of annual reporting;⁽¹⁵²⁾
- counterfeit of goods and provision of false statements;
- over-invoicing prices of imported machinery and equipment.

⁽¹⁵²⁾ Article 71 (1), indeed, provides that in order to facilitate the monitoring of the implementation of authorised private investments, companies should provide ANIP with information on the implementation and development of investment, profits and dividends of the projects, by completing the form that is sent to them by the Agência Nacional para o Investimento Privado on a yearly basis.

In sum, the implementation and management of private investment project shall be carried out in strict accordance with the conditions of authorisation and applicable law and may not deviate from the purpose that has been arranged. By virtue of Article 86 (1)(2), the violations above listed are liable of the following consequences:

- a fine ranging between US\$ 10.000 and 500.000, with the minimum and maximum figure which may increased three-fold in case of recidivism;
- loss of exemptions, tax incentives and other facilities provided;
- withdrawal of authorisation to investment (which, in case of non-implementation of project within deadlines set in the authorisation or in the extension, is accompanied by a fine in the amount of one third of the investment value, save where force majeure is duly established).

Finally, it is worth noting that the Law No. 20/11, just like the Decree No. 49/11, establishes that the resolution of contentious issues in matter of private investments in Angola's territory shall be settled in the Country on the basis of its domestic law and before Angolan judges, whereas the *Lei 16/03 de 25 de Julho* provides the opportunity to resolve disputes relating to the international flow of goods, services and capital by arbitration.

In Angola, the validity of arbitral awards delivered abroad may be recognised through a specific procedure for recognition. It is to be taken into account, however, that so far Angola has not signed the 1958 "New York Convention" on the Recognition and Enforcement of Foreign Arbitral Awards, or the 1965 "Washington Convention" on the Settlement of Investment Disputes Between States and Nationals of Other States.

3.5 Angola: A Game Changer?

In light of the above, *ZEE Luanda-Bengo* appears to be as a wide-ranging project that has just began to move its first steps. Yet, this certainly is the most important phase of its existence, for the direction that it takes today will be an irreversible process: eventually, it will make it either a game-changer in the history of EPZs or just “another” zone. Then, if one also considers that Angola is being the centre of attention in international affairs for – as has previously been explained – the massive abundance of strategic resources that its territory has to offer and, accordingly, every day its future looks brighter than ever, following the path of evolution of its SEZ is definitely something to look forward to.

In May 2012, a new wastewater-treatment plant was inaugurated along with six new factories, which is going to serve all units planned for the quadrants of the zone. In the beginning of 2013 were opened 25 industrial units and the programme is to put into operation another 53 plants by 2014. A consistent number of factories (17, as of September 2012) operate in the field of industrial production, yielding for instance from foam and mattresses to electrical cables and other electrical equipment of medium and low voltage, from the manufacture of optical fibre cables to steel towers, and then, irrigation equipment, fences and wires, paints and varnishes, polyethylene tubes, pipes and fittings, and water pumps.⁽¹⁵³⁾

To date, the Luanda-Bengo SEZ has created more than 3.000 jobs, and a third of them is employed in 14 industrial units that are already operating, whereas two thirds have found employment in indirect jobs created within the framework of the *ZEE*, notably in the fields of construction industry, security

⁽¹⁵³⁾ See note 149.

and services. Nevertheless, the aim is to give employment to some 10.000 Angolans by the time the SEZ is operating at its fullest. These are quite remarkable figures, if one thinks that Angola's population accounts for just about 19 millions, that in 2010, 47.8 per cent of it was aged between 0-14, and that the current median age is 17.7 years.⁽¹⁵⁴⁾ This means that such a young population will grow side by side with the SEZ advancement; and therefore it is essential that the latter could succeed in acting as a socio-economical tool for a sustainable development, in order to ensure a brighter future to the generations to come. In 1839, Thomas Carlyle wrote:

“Can the poor man that is willing to work, always find work, and live by his work? Statistic Inquiry, as we saw, has no answer to give. Legislation presupposes the answer—to be in the affirmative. A large postulate; which should have been made a proposition of; which should have been demonstrated, made indubitable to all persons! A man willing to work, and unable to find work, is perhaps the saddest sight that Fortune's inequality exhibits under this sun.”⁽¹⁵⁵⁾

If Angola will be “governed and guided in a ‘wise and loving’ manner” – unlike the mid-nineteenth century Ireland criticised by Carlyle in the part ensuing the excerpt quoted above – accordingly, *ZEE Luanda-Bengo* may constitute a positive and functional interface with the community and may aspire to become a constructive and forward-looking model for many other developing countries.

Table 3.1 – Angola's ratification of ILO's Fundamental Conventions

⁽¹⁵⁴⁾ Latest data available. Sources: Database of the UN Department of Economic and Social Affairs (Population Division, Population Estimates and Projections Section), and CIA World Factbook.

⁽¹⁵⁵⁾ Carlyle T., “Finest Peasantry in the World” in *Chartism* (1840), published in *The works of Thomas Carlyle*, (Duff Traill H. ed.), New York, Cambridge University Press, 2010, p. 135.

| <i>Fundamental Conventions</i> | Date | Status |
|--|-------------|---------------|
| C029 – Forced Labour Convention, 1930 (No. 29) | 04 Jun 1976 | In Force |
| C087 – Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) | 13 Jun 2001 | In Force |
| C098 – Right to Organise and Collective Bargaining Convention, 1949 (No. 98) | 04 Jun 1976 | In Force |
| C100 – Equal Remuneration Convention, 1951 (No. 100) | 04 Jun 1976 | In Force |
| C105 – Abolition of Forced Labour Convention, 1957 (No. 105) | 04 Jun 1976 | In Force |
| C111 – Discrimination (Employment and Occupation) Convention, 1958 (No. 111) | 04 Jun 1976 | In Force |
| C138 – Minimum Age Convention, 1973 (No. 138) | 13 Jun 2001 | In Force |
| C182 – Worst Forms of Child Labour Convention, 1999 (No. 182) | 13 Jun 2001 | In Force |

Source: ILO, Normlex database.

Table 3.2 – Angola’s ratification of ILO’s Governance Conventions

| <i>Governance Conventions (Priority)</i> | Date | Status |
|---|-------------|---------------|
| C081 – Labour Inspection Convention, 1947 (No. 81) | 04 Jun 1976 | In Force |
| C122 – Employment Policy Convention, 1964 (No. 122) | / | / |
| C129 – Labour Inspection (Agriculture) Convention, 1969 (No. 129) | / | / |
| C144 – Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) | / | / |

Source: ILO, Normlex database.

To date, Angola has ratified 33 ILO’s Conventions, although none have been ratified in the past twelve months. As the *Table 3.1* shows, all of the fundamental Conventions have been approved and appear to be in force;

however, the *Table 3.2* highlights that only 1 out of 4 Governance Conventions has been ratified, that is, the Convention on Labour Inspection (No. 81). It strikes the eye that neither the Employment Policy Convention (No. 122) nor the Tripartite Consultation Convention (No. 144) has been ratified so far. Furthermore, Angola has endorsed only 24 Technical Conventions out of 177.⁽¹⁵⁶⁾

The cooperation with the ILO has always been quite problematic. At the last International Labour Conference (102nd Session, 2013), the CEACR has listed the cases of failure to supply information in reply to comments made by the Committee of Experts (Cc. No. 12, 17, 19, 27, 29, 100, 105, 111) and the cases in which the Committee has requested early reports after an interval of either one, two or three years (C. No. 88). Nevertheless, the Committee has been able to note with interest the measures taken by the Angolan Government with respect to the Convention on Labour Inspection (No. 81).⁽¹⁵⁷⁾

In general terms, it is true that Angola has been affected by exceptional circumstances for years, as a result of which it has been deprived of the institutions needed to fulfil the obligation to submit instruments; but it is also true the fact that the Angolan ruling class is largely corrupt and inefficient – as it has previously been explained.

In a promotional video for the Luanda-Bengo SEZ addressed to potential zone investors (an exclusive document obtained thanks to the Italian Embassy in Luanda for the present dissertation) there are no tired workers, no pregnant women doing overnight shifts, no disrespectful employers, the roads are clear,

⁽¹⁵⁶⁾ ILO, Normlex database.

⁽¹⁵⁷⁾ ILO, Report of the Committee of Experts on the Application of Conventions and Recommendations, International Labour Conference, 102nd Session (2013), Geneva, ILO, 2013, pp. 19, 22, 27.

the flowerbeds are well maintained, a hospital is displayed together with some nice flats and a gym. Well, this might smell of propaganda and reality is certainly different. But what if things were not really that far from that video idyllic representation? What if the Angolan SEZ were setting the way to be a game-changer? Its legislation in matter of labour rights is surprisingly good for a country that is still considered as a Least Developed Country (although it is trying to graduate from this status, as it has been pointed out before). Article 7 of the *Lei General do Trabalho de Angola*, a n.º 2/00 de 11 de Fevereiro, states that the sources of the right to work are:

- a) the Constitution;
- b) international labour conventions dully ratified;
- c) applicable laws and their regulations;
- d) collective workforce agreements;
- e) employment contract;
- f) local practices and customs, as well as entrepreneurial or professional ones.

As for the *ZEE*, then, Article 9 provides that “a regulamentação das relações jurídico-laborais de carácter especial respeita os direitos fundamentais reconhecidos na Constituição e nas leis e ainda os princípios subjacentes à Lei Geral do Trabalho.” In addition to the national legislation, the Angolan case will be of extreme importance given that Jose Paiva, the *ZEE* General Director, two years ago affirmed:

“(…) *ZEE* Luanda-Bengo gives a lot of importance to the social aspect of its workers and is the first interested part in the promotion and training of its administrative staff and workforce. We believe that the living and working

conditions have to be harmonious and we have helped to improve that of our workers.

We have an area in control of quality, natural environment and Corporate Responsibility and we have a project to develop a ZEE Responsibility centre to help the communities.”⁽¹⁵⁸⁾

For the time being, there is no public information on the implementation of such centre; however, the news alone is already encouraging in itself. *ZEE Luanda-Bengo* bears a great responsibility on its shoulders, given that it will show if the EPZ concept may be able to reconcile human and economic development: there is just so much to look forward to.

⁽¹⁵⁸⁾ Interview released to Worldfolio, November 2011, <<http://www.worldfolio.co.uk/region/africa/angola/jose-paiva-director-general-de-polo-de-desenvolvimento-de-zona-economica-especial-de-luanda-bengo>>.

Conclusions

As has been shown, the concept of EPZ is based on trade. Adam Smith theorised that “truck, barter, and exchange one thing for another” constitute an innate propensity in human nature, *ergo* every human has a propensity to trade. With that being said:

“(…) man has almost constant occasion for the help of his brethren, and it is in vain for him to expect it from their benevolence only. *He will be more likely to prevail if he can interest their self-love in his favour, and show them that it is for their own advantage to do for him what he requires of them.* Whoever offers to another a bargain of any kind, proposes to do this. Give me that which I want, and you shall have this which you want, is the meaning of every such offer; and it is in this manner that we obtain from one another the far greater part of those good offices which we stand in need of. It is not from the benevolence of the butcher, the brewer, or the baker, that we expect our dinner, but from their regard to their own interest. We address ourselves, not to their humanity but to their self-love, and *never talk to them of our own necessities but of their advantages.*”⁽¹⁵⁹⁾

In other words, if people want to “exchange one thing for another”, they need other people, because mere empirical observation demonstrates that it is impossible to trade in the absence of others. It is as simple as that. However, this automatically implies one key element, that is, self-interest motivates exchange. Now, in chapter one it has been illustrated how the concept of EPZ was moulded by the forces created in the wake of the Bretton Woods system on the assumption that trade, when voluntary, makes all parties to the

⁽¹⁵⁹⁾ Smith A., *An Inquiry into the Nature and Causes of the Wealth of Nations* (Cannan E. ed.), Library of Economics and Liberty , 1776/1904, I.2.2, available at <http://www.econlib.org/library/Smith/smWN1.html#B.I.%20Ch.2,%20Of%20the%20Principle%20which%20gives%20Occasion%20to%20the%20Division%20of%20Labour>.

exchange better off. The point here is that trade undoubtedly creates wealth, but only if it is done on an equal basis between the parties, which has not been the case for a remarkable number of EPZs worldwide. How can trade be fair when developing countries' governments are afraid of losing their FDI inflow? How can trade be equal when zone factories are afraid of losing their brand-name buyers? How can trade be positive when workers are afraid of losing their unstable jobs? It appears to be evident that EPZs are built not on land, but on air. To say in the words of Reich, the result of EPZs "has been a clamor of competing business interests – a cacophony so loud as to almost drown out any serious deliberation over the public good".⁽¹⁶⁰⁾

Reading very enlightened observations conceived back in the late eighteenth and early nineteenth century might make the blood run cold if, at the same time, one keeps in mind the issues related to EPZs – which came more than a century and a half later – described throughout this dissertation. For instance, Wilhelm von Humboldt wrote:

“(...) men who love their labour for its own sake, improve it by their own plastic genius and inventive skill, and thereby cultivate their intellect, ennoble their character, and exalt and refine their pleasures. And so humanity would be ennobled by the very things which now, though beautiful in themselves, *so often serve to degrade it.* (...)”

But, still, *freedom is undoubtedly the indispensable condition, without which even the pursuits most congenial to individual human nature, can never succeed in producing such salutary influences.* Whatever does not spring from a man's free choice, or is only the result of instruction and guidance, does not enter into his

⁽¹⁶⁰⁾ Reich R. B., *Supercapitalism. The Transformation of Business, Democracy, and Everyday Life*, New York, Random House, 2007, p. 143.

very being, but remains alien to his true nature; he does not perform it with truly human energies, *but merely with mechanical exactness.*"⁽¹⁶¹⁾

And a few decades later, Toqueville added:

“When a workman is unceasingly and exclusively engaged in the fabrication of one thing, he ultimately does his work with singular dexterity; but at the same time *he loses the general faculty of applying his mind to the direction of the work.* He every day becomes more adroit and less industrious; so that it may be said of him that in proportion *as the workman improves, the man is degraded.* What can be expected of a man who has spent twenty years of his life in making heads for pins...? *In proportion as the principle of division of labor is more extensively applied, the workman becomes more weak, more narrow-minded, and more dependent.* The art advances, the artisan recedes. (...)

The territorial aristocracy of former ages was either bound by law, or thought itself bound by usage, to come to the relief of its serving-men and to relieve their distresses. *But the manufacturing aristocracy of our age first impoverishes and debases the men who serve it and then abandons them to be supported by the charity of the public.* (...) I am of opinion, on the whole, that the manufacturing aristocracy which is growing up under our eyes is one of the harshest that ever existed in the world. (...) The friends of democracy should keep their eyes anxiously fixed in this direction.”⁽¹⁶²⁾

These classical liberals, in sum, had a very precise idea on the nature of human beings. They believed that the type of work that one does and the

⁽¹⁶¹⁾ Von Humboldt W., *The Limits of State Action*, (Burrow J.W. ed.), Cambridge, Cambirdge University Press, 1969, pp. 24, 27-28.

⁽¹⁶²⁾ Toqueville A. de, *Democracy in America* (1835), New York, Knopf, 1948, Vol. II, Book II, ch. XX, pp. 158-159, 161.

control that he/she has over it, the grade of creativity that it is allowed to be expressed and, most of all, the chance to make his/her own choices in respect to the latter, are the factors that determine what kind of creature he/she is. Accordingly, EPZ is more along the lines of meaning *Exploiting People Zone*, rather than just Export Processing Zone, because most of the times zone workers do not live and operate under that “indispensable condition” that is *freedom*; because they are considered as nothing but machines for producing with “mechanical exactness”; because consequently they become “more weak, more narrow-minded, and more dependent” and hence they find dramatically difficult, if not impossible, when even unconceivable, to stand for their own rights. *Exploiting People Zones* exchange labour rights with the fake promise of wealth and development: how could this ever better off *all* the parties involved in such a sick trade?

In his “The Wealth of Nations”, Smith decried the mercantile system by explaining that:

“The interest of the dealers, however, in any particular branch of trade or manufactures, is always in some respects different from, and even opposite to, that of the public. (...) The proposal of any new law or regulation of commerce which comes from this order, ought always to be listened to with great precaution, and ought never to be adopted till after having been long and carefully examined, not only with the most scrupulous, but with the most suspicious attention. It comes from an order of men, whose interest is never exactly the same with that of the public, who have generally an interest to deceive and even to oppress the public, and who accordingly have, upon many occasions, both deceived and oppressed it.”⁽¹⁶³⁾

⁽¹⁶³⁾ Smith A., *op. cit.*, I.11.264.

Thousands and thousands of years of human evolution, yet, eventually, man remains the same. Our economic system works, but it does it in the interest of the masters. Thus, Chomsky is right when he calls for an economic system that works in the interests of the general population, but that will only happen when people are the very principal architects of policy, that is, when *real* democracy is achieved. With respect to the latter, he fairly argues that “as long as power is narrowly concentrated, whether in the economic or the political system, you know who’s going to benefit from the policies”, therefore, the whole system of corporate capitalism must be “completely dismantled, because it’s radically *anti-democratic*”. It goes without saying that this is not something that may be done in the blink of an eye. Indeed, it requires building up an entire cultural and institutional basis in order to obtain such ground-breaking changes.⁽¹⁶⁴⁾

For its very nature, the ILO has the responsibility to start this peaceful revolution. Ever since its establishment, indeed, it has been the only forum where the governments and the workers’ representatives of the member states may freely and openly share experiences and compare national policies. Its tripartite structure makes the ILO the only international organisation in which entrepreneurs and workers have the same voice of governments in formulating policies and programmes. It may be argued that the ILO’s action is hindered by some objective limits not so much in terms of visibility and validity of social norms, but rather in terms of their effectiveness. This stance holds that the system relies on the voluntary nature of ratification as well as it lacks of effective sanctioning provisions capable of ensuring compliance with the standards. But when there is a will, there is a way.

⁽¹⁶⁴⁾ Chomsky N., *Understanding Power. The indispensable Chomsky* (Mitchell P.R. and Schoeffel ed.), New York, The New Press, 2002, p. 140.

The ILO has demonstrated that it is capable of acting as a guiding light for *all* the entities involved in the international economic relations – states are no longer the exclusive recipient of its action – by diversifying its means of intervention. When in 1998 the Organisation adopted the Declaration on Fundamental Principles and Rights at Work, it relaunched its position as regulatory agent making a fundamental leap forward by resorting to soft law in order to promote the implementation of hard law instruments such as its conventions. Another tangible proof of the ILO's evolution process may be found in the 2008 Declaration on Social Justice for a Fair Globalisation, because for way too long the market's ability of self-regulation had been overrated while, at the same time, the importance of intervention in matter of social policy and safeguard of decent work had been minimised.

In conclusion the ILO ought to persist in the strengthening of its operative sphere by trying to build a system of shared responsibilities that may involve all the entities that participate in the market. The sooner it does so, the sooner EPZ will unequivocally mean *export processing zone* and also *exploiting people zone*. And to the sceptics who ask “why?” – to paraphrase George Bernard Shaw's famous sentence - we shall respond that we have the right to dream of things that never were and ask “Why not?”.

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