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Export Processing Zones in Kenya

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Abstract:
A number of developing countries have been struggling to realign their economies by integrating it to the supply chain of world. These countries therefore are working day and night to move afar from what they can consider as an economy which is import-focused to one which is export- centric. These countries in the Asian world, the continent of Africa, and the Latino America are working towards export development programs which encourage financial and non-financial investments from a number of multinational investors. This assignment therefore looks at the processing zones of export and the regulatory authority in Kenya.

Keywords: *Developer, enterprises, EPZ, EPZA, and operator*

1. Background

An Export Processing Zone usually just abbreviated as EPZ is an area of Customs where a person i.e. either individual or a body corporate is permitted to import PME (plant, machinery, equipment) and other material for the manufacture processing or fabrication of goods for export. These imports are however under security since it is performed without any duties paid. These selected areas in any country are meant to perform the following functions:

- Allure exotic investment to generate jobs
- Enlarge the industrialst and
- Establish technology
- Create reversed connection between the zones and the native economy

2. Definitions of EPZs

The fundamental motivation for defining EPZ includes looking at geographic or confined areas plus the free-trade conditions to lure export-centered manufacturers. Among the most commonly noted are:

According to World Bank, 1992, an EPZ can be an industrial estate which is usually a fenced- area of between 10-300 hectares that specializes in the manufacture for exports. This estate industrial offers firms free-trade conditions and a regulatory environment which is liberal.

McIntyre et al., 1996, defines an Export Processing Zone as an enclave or preserve in which merchandise may be imported, stockpiled, repacked, produced, and reshipped with a trimming on obligations and/or least interceding by customs authorities.

As per Mandani, 1999, an EPZ is a fenced-in industrial estate that specializes in the production and or manufacturing for exports which proffer firms permitted commercial conditions and unprejudiced regulatory environment.

Yet again, ILO, 2003, in their definition re-iterates that an EPZ is an industrial zone with exceptional inducements to charm foreign investment, in which imported cargo go through some degree of processing before being exported afresh. According to Engman, Onodera and Pinali (2007), EPZ is a government blueprint to advance exports of goods/ services by gifting a more competitive business environment through supplying of exceptional incentives like particular tariff exemptions to inputs either in a geographically described zone or through a defining procedure.

Diversity and convolution of zones have expanded as many states have embraced varying trade advancement zones for substantial variety of merchandised goods and services. Contemporary EPZs frequently have additional pliable dictums with regard to export requirements, e.g. some EPZs permit for domiciliary supply much as the products and services are considered as imports and tantamount to the same trade dictums including quotas.

For the EPZ to operate properly in an area there must be resources considered vital which can entice investment. These include factors as such as natural resources, affordable skilled labor, or operational advantages in terms of infrastructure.

Counties can also put in place a number of activities according to the EPZ Act (2015) to promote the willingness for nationals and otherwise to concentrate in the EPZ investment. This, the various countries can ensure by offering expedited licensing or building permits. The countries can also put in place extremely minimal customs regulations plus bringing in a number of incentives on duty-free tax like tax holidays. The countries may also opt to develop infrastructure which are in accordance to the requirements of investors.

3. The Historical Background

According to Aggarlwal, (2004), the ding about EPZ could be as a result of areas of free trade which were put in place in key ports like Gibraltar, Singapore and Hong Kong in the course of the nineteenth century. Some of these zones certified imports and exports which were never put through custom formalities. This was to ensure that goods were swiftly re-exported. Since the 1930s accordingly, The EPZs have been adopted various by developing countries. This adoption has majorly been to create incentives for foreign investment. This mode may be called Export Processing Zones (EPZs) or Free Trade Zone (FTZs) or sometimes Special Economic Zone (SEZ). A term, very special, was however created in Mexico where it is known as and maquiladora- a factory run by a foreign company and exporting its products to the company's country of origin.

By the year two thousand and six, around one hundred and thirty countries had started more than Three thousand five hundred such special zones within their jurisdictions. Engman, Onodera, & Pinali, (2007) says that approximately 66 million people are employed in such areas world over. According to Basile and Germidis (1984), Some EPZ's are single factory locations while some are extremely large and have a resident population. The study sites the Chinese Special Economic Zones as such a large one.

4. Export Processing Zones in Kenya

According to the EPZ Act (cap 517), the program was kicked off in 1990 when Act was enacted in Kenya. This program is governed by the Export Processing Zone Authority (EPZA). The main goal of the program is to promote industrial investments which are export oriented within the zones designated. The program offers a range of very good procedural, physical and fiscal incentives that lower the costs of operation. It also ensures quick set up and glibber operations.

The main objective of EPZ ideally was to promote and smoothen the investments that are export- centric and also to develop an enabling environment for such investment. Other purposes include the promotion and facilitation of the export-oriented investments, the development of an enabling environment for investment in the export sector and also addressing of the infrastructural and institutional confines for export-led production efficiency.

Presently Kenya has Gazetted over 40 zones including Athi River, Kerio Valley, Kilifi, Mombasa, Nairobi and Voi. The above-mentioned zones according to EPZA, K. (2003) are currently in various stages of growth. These are being undertaken by both private and public developers and operators. It is important to be cognizant of the fact that the zones are governed and propelled by the Export Processing zones Authority.

4.1. It Is Good to Note That

First, the secretary of cabinet may, on enjoinder with the Authority and in discussion with the current secretary of cabinet in charge of finance, intending to attract, promote or increase the goods manufacture, or service provision that is intended for export by a notice of gazette decree that any area within Kenya be an EPZ. Secondly, every proclamation of an EPZ herein above explained, shall elucidate the extents of any zone and that shall remain to be until otherwise revoked by the same secretary to the cabinet. The revocation, he may only do by another gazette order.

5. The Export Processing Zones Authority (EPZA)

EPZA, herein after referred to as an authority, according to EPZ Act, is defined as a State Corporation and was established in Kenya in 1990. This establishment was through the EPZ Act CAP 517 found under the laws of Kenya. It is in the ministry of industry, trade and cooperatives. This authority is a body corporate with perpetual succession and is therefore a legal person.

6. The membership of the EPZA

The authority is constituted of various personalities including a chairperson appointed by the President. There also are Kenya Association of Manufacturers and Kenya National Chamber of Commerce and Industry representatives. Included in the list of membership are four members with experience and expertise in either manufacturing, trade on export or even commercial and financial matters. These four members, usually from the private sector, are appointed by the cabinet secretary. In the list of membership also are the permanent Secretaries to the treasury and the ministry of industry. The CBK Governor, the commissioners of Customs and Excise and also of lands plus the managing director of the investment promotion centre also automatically are included in the list.

7. The Mandate of the Authority

The main objective of EPZA is the promotion and facilitation of investments that are export oriented. It also sees into the development of an enabling environment for such investments. According to the Act, the program offers a diversity of very lucrative fiscal, physical and procedural incentives. These, it offers to ensure that the costs of operations are lowered and the set-up procedures are hastened and streamlined. Included in their list of objectives are the developments of all the features of the areas but particularly ensuring that they provide requisite advice on how to remove the inhibitors to such trade. On the same note, they ensure that incentives are created in all the areas oriented to production geared towards export and as such designated. The authority also regulates and administers the various activities which have been approved within such special areas. This they do through bringing on board good and viable administrative systems and internal controls for self-regulations to the said activities to maximize their efficiency. Lastly, the authority ensures that the revenues meant to the government are well protected and foreign currency well-regulated on the same platform.

8. Activities of the Export Processing Areas

Within the EPZs, the activities based on manufacturing, commercial or services will be permissible. The above-mentioned activities shall be shall allowed on condition that there is a physical separation of any two activities deemed to be undertaken. This is in situations where both manufacturing and commercial activities in the said area involve goods which are manufactured outside Kenya. The other condition is that goods manufactured outside Kenya must be clearly marked or labeled as so under the commercial activities. The must bear the name from where they originate. Otherwise, apart from the above explanation, any notice by the Minster in the *Gazette* will keep operating as specified for each designated areas orzones.

9. Licensing of the Export Processing Zones

According to the EPZ Act (cap 517) there is no person who will be allowed to carry on business any business a developer or an operator at an export processing zone or even as an and no any person shall be granted the authority to provide or of maintaining any activities or perhaps any facilities within an area designated as EPZ enterprise. This shall only be if he (such a person) has such been explicitly and expressly licensed to operate as herein above stated. To register any applicant, the EPZA will issue a license in the right format as prescribed by the Act. Before issuing such a license however, the authority is required to have an in-depth discussion with the KRA's commissioner-general. The authority shall also always notify the KRA of all licensed areas and ensure they specify a number of issues in such a notice. These issues will include the nature and types of activities that every licensed enterprise is allowed to carry out. On that note, it shall also ascertain whether such activities shall or shall not be allowed on the manufacturing activities. This notice shall also enumerate clearly any other circumstances prerequisite and attached to the same license so provided.

As the EPZA intends to issue a license to any applicant, they must ascertain that the applicant for one is if a company must have been incorporated in Kenya. The main objective of being incorporated is to operate in the export processing zone. Such an applicant must also have the ability both financially, materially and in the level of expertise to such operate in the prescribed special areas of trade. The so-called applicant must also be able to lease or own land for its operation to a minimum of thirty years within such operation zone. This is unless such an applicant is appointed within section twenty-two (22) of the act.

In the case of an SME intending to enlist within the EPZs, the following benchmarks must be taken to consideration. Such SMEs must only operate from within the target sectors. The SMEs are to be a new form of a kind of a business but not really a startup. It is also good to note that the total capital of such an SME ought to be less than Kshs 40M with the local Kenyan shareholding being more than or equal to 75%. Yet again, the number of its initial workers ought to be less than 100. The said SMEs should not require a space more than what is available to be allocated to them, precisely not more than 750sqms. The said SMEs must also be ready to at any time abide by the regulations specified under the program.

10. Incentives to Export Processing Zone Enterprises

The various operators and or the developers plus the enterprises themselves shall be given total exemption in terms of the current and potential taxes accruing to them. By this, the taxes relate to customs and excise taxes and also to the VAT. Such taxes shall be not only from the incomes such generated but also from the total inputs to the special economic areas. These mentioned inputs being machinery and infrastructural including transportation. In relation to the above paragraph and without bigotry to any other applied or express law, business people within the EPZs will be allowed some more incentives as follows.

They will be exempted from registration under VAT and payment of excise duties as per the act cap 472. These operators shall also be exempted from income tax as per cap 470 of the income tax act for the first 10 years. On the same note, they will be required to pay income tax after 10 years at a reduced rate of 25%. Further exemptions shall be accorded to them in regards to withholding tax on dividends plus any other remissions to non-residents. Stamp duties, shall also be exempted plus quotas and other restrictions or prohibitions under international trade. The operators also shall be fully exempted from exchange controls where they need to make payments for a number of services. Amongst them are the receipts and payments for the various inputs and any other capital expenditures they incur in the course of trading within the special zones. This will also extend to administration and management fees.

Generally, the fiscal incentives to the operators and EPZ enterprises shall include a tax holiday for 10 years on both corporate and withholding tax after which a reduced rate of 25% corporate tax shall be charged. However, this incentive shall not apply to commercial licenses. On the new investments, 100% allowance shall be granted on buildings and machinery. This shall be applicable for over 20 years while payment of stamp duty shall be perpetually exempted on any legal instruments. On the same note, VAT and customs import duty on inputs shall also be perpetually exempted. The VAT exemption shall also comprise of any goods and services locally purchased. However, in the case of the motor vehicles, they only will be exempted as long as they remain within the zones.

11. Advantages of the Export Processing Zone

Studies indicate that over 130 countries currently provide EPZs within their borders. This has led to a number of advantages. Some of them include:

- Through increased exports, there has been an increase in foreign exchange.
- Good employment opportunities through the various jobs created.
- There also has been to the countries a Foreign direct investment(FDI)
- Such countries have also enjoyed an introduction of better technology
- The economy has also enjoyed financial spread through backward linkages emanating from the specialzones.

12. Disadvantages of the Export Processing Zone

- Studies have also shown that most of the employees in the EPZs are female who are underpaid.
- The mean wage offered in the EPZ is quite low yet the work involved is extremely tiresome with no well-balanced takeovers in terms of routine and working hours.
- The EPZ have also not done so well with enabling unions to thrive. They suppress them leading to no clear avenues for the employees to seek for better terms of employment which could easily be realised through collective bargaining.

13. Summary

Studies indicate that EPZs provide a good opportunity for investment in export-oriented trade. This is because no one is restricted from such investments. It is common to find an EPZ firm 100% owned by foreigners or Kenyans or sometimes a combination of both Kenyan and foreign ownership. These Enterprises may also hire employees locally or imported. Likewise, to training, managing and technical aspects of their trade. Lastly, the program guarantees a number of incentives to the operators ranging from fiscal, physical and procedures to aid in better output.

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