

報告番号	※	第	号
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主 論 文 の 要 旨

論文題目

Central American Export Processing Zones:
Industrial Policy vs. Trade Liberalization in
Multilateral and Regional Trade Agreements

氏 名

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論 文 内 容 の 要 旨

1. Introduction.

The present study analyzes export-processing zones (hereinafter EPZs) as significant industrial policies of Central American countries within the different multilateral and regional levels of the international economic law (hereinafter IEL). The study identifies the specific IEL provisions that clash with the fiscal and regulatory incentives granted by governments in EPZs. The main objective is to offer an optional legal framework within the international trading system that harmonizes EPZs as industrial policies with the different levels of the IEL.

2. Trade Liberalization and Industrial Policies

The clashes that take place between IEL rules and industrial policies are created when countries become members of international trade regimes (hereinafter ITRs). Countries sign multilateral trade agreements (hereinafter MTAs) and regional trade agreements (hereinafter RTAs) to remain competitive in the international trade arena and have preferential market access to various countries. By becoming members of MTAs and RTAs, countries must comply with the specific obligations that the agreements provide. These agreements, shaped and borne from negotiations and voluntary signing of countries,

are mainly based on principles of reciprocity and non-discrimination enshrined in the multilateral and regional levels of the IEL.

The most representative trade provisions found in the multilateral level are the multilateral trade agreements (hereinafter MTAs), especially the General Agreement on Tariffs and Trade (hereinafter the GATT) of 1947 and the agreements of the World Trade Organization (hereinafter the WTO) of 1995. In the regional level, proliferating regional trade agreements (hereinafter RTAs) are day-by-day gaining momentum in trade policy practice and covering issues that go beyond the MTAs. As previously stated, the IEL provisions in these two levels seek trade liberalization through non-discrimination and reciprocity principles. Therefore, they are considered to limit the policy space of sovereign countries that want to freely implement specific protectionist industrial policies.

Industrial policy can be defined as “government policies directed at affecting the economic structure of the economy.”¹ Today there is a revival in the interest of industrial policy. Countries aiming at implementing industrial policies need to identify their proper policy space so that they can still comply with the IEL.

Besides the multilevel structure that the IEL portrays, i.e. multilateral and regional levels, the IEL provisions are also considered to be either in the hard law or in the soft law realm of international law. Hard law is defined as “legally binding obligations that are precise (or can be made precise through adjudication or the issuance of detailed regulations) and that delegate authority for interpreting and implementing the law.”² The MTAs and RTAs are both considered hard law instruments. The soft law realm “begins once legal arrangements are weakened along one or more of the dimensions of obligation, precision, and

¹ Joseph E. Stiglitz, Justin Yifu Lin, and Célestin Monga, “The Rejuvenation of Industrial Policy,” Policy Research Working Papers. Washington D.C.: The World Bank, (2013): 1, <http://dx.doi.org/10.1596/1813-9450-6628>.

² Kenneth W. Abbott and Duncan Snidal, “Hard and Soft Law in International Governance,” *International Organization* 54, no.3 (2000) 421.

delegation.”³

Provisions included in the soft law realm are voluntary and quasi-legal by nature. Examples of soft law instruments in the IEL are the rules on corporate social responsibility (CSR) and ethical codes of conduct (CoC). These instruments seek voluntary compliance of companies with issues related to human rights, labor, and the environment among others, to ensure clean operation processes. They affect industrial policies in that they encourage institutions to voluntarily comply with certain rules and ethics, constraining in this way freedom in operation processes that at times leads to violations of basic human rights.

Considering the existing rules in the different levels and realms of the IEL, and to remain competitive, developing countries need to optimize their comparative advantages and pursue outward export-led growth with some degrees of protectionism and industrialization. The dynamics of the IEL provisions, CSR provisions, the clashes of trade liberalization rules with industrial policy, and the comparative advantage that developing countries use through specific industrial policies can be analyzed in light of the EPZs.

3. EPZs as Industrial Policies in Central America

The World Bank defines EPZs as “fenced-in industrial estates specializing in manufacturing for exports that offer firms free trade incentives and a liberal regulatory environment.”⁴ The incentives offered by the host governments to companies establishing EPZs are various, among them fiscal incentives and regulatory incentives.

3.1 EPZ Fiscal Incentives and clashes with the Multilateral Level of the IEL

Fiscal incentives in the Central American countries⁵ are granted through the specific

³ Ibid., 422.

⁴ The World Bank, *Export Processing Zones*, Policy and Research Series Paper 20, Industry and Energy Department, Washington D.C.: World Bank, (1992): 1, <http://www1.worldbank.org/prem/PREMNotes/premnote11.pdf>.

⁵ Central American countries by alphabetical order: Costa Rica, El Salvador, Guatemala, Honduras. Belize and Panama are currently also Central American countries however are not included in the present study as their EPZ schemes differ from the original five Central American countries.

EPZ laws that each government enacts in their domestic legal frameworks. Institutions at the public and private levels are also created to attract and manage the investment and operations in EPZs. The fiscal incentives include exemptions on import and export tariffs, tax holidays, rebates, exemption from direct taxes such as profit taxes, and exemptions' from indirect taxes such as value added tax on domestic purchases, among others. These fiscal incentives may fall into the export subsidy prohibition provided by the WTO Agreement on Subsidies and Countervailing Measures (hereinafter the ASCM). The Special and Differential Treatment (hereinafter SDT) of developing countries granted in the ASCM that allows exemptions to the export subsidy prohibitions terminates in December 2015. A specific list of countries, beneficiaries of the SDT, needs to undergo EPZ reforms to comply with the WTO.

3.2 EPZ Regulatory Incentives and clashes with the Regional Level of the IEL

The regulatory incentives granted in Central American EPZs, among many, include flexibilities in labor law that may lead to violations of labor standards provided in the Conventions and Recommendations of the International Labour Organization (hereinafter the ILO) and which the Central American countries have become signatories of. EPZs in the region focus on massive labor-intensive textile and assembly manufacturing. To keep low labor costs, companies may violate certain core labor standards (hereinafter CLS) such as freedom of association, collective bargaining, and occupational health and safety. As EPZs are considered to be footloose companies, meaning that they can easily move to other countries with more attractive investment opportunities, governments may seem indifferent to some labor violations that take place.

There is no internationally enforceability of labor standard violations in the

The Dominican Republic, which is a Caribbean country, is included in the EPZ analysis of the present study as it is a DR-CAFTA member.

multilateral level of the IEL. Internationally enforceable labor provisions are included in RTAs. The North American Free Trade Agreement (hereinafter the NAFTA) includes these provisions in its labor side agreement, the North American Agreement on Labor Cooperation (hereinafter the NAALC). Thirty-nine labor cases have been submitted to the NAALC, 11 of which the labor standard violations took place in Mexican EPZs. The United States-Dominican Republic-Central America Free Trade Agreement (hereinafter the DR-CAFTA) includes internationally enforceable labor provisions in Chapter 16 of the RTA. The single-ever labor case brought to a dispute settlement mechanism in trade policy history has taken place within the DR-CAFTA. The United States (hereinafter the U.S.) claims that Guatemala is failing to enforce labor standards provided in the labor chapter as Guatemalan EPZs were violating freedom of association and collective bargaining principles. The case, named “Guatemala – Issues Relating to the Obligations Under Article 16.2.1 (a) of the DR-CAFTA” was first filed in 2008. Both parties failed to reach an agreement through negotiations. At present, seven years later since the case was filed, the case remains ongoing with a reactivated arbitral panel.

4. EPZs and International Soft Law

Soft law instruments in the form of CSR rules and CoC directly affect MNCs that establish EPZs. International organizations that encourage CSR are, for instance, the ILO with the Tripartite Declaration of Principles concerning MNCs and Social Policy, the Organisation for Economic Co-operation and Development (hereinafter the OECD) with its Guidelines for MNCs, and the International Organization for Standardization (hereinafter ISO) 26000.

CoC can have direct positive effects to ensure compliance of EPZs to the IEL. Today, based on facts, investors establishing textile assembly EPZs, including worldwide renowned EPZs, are strongly encouraged to join the World Responsible Accredited Production

(hereinafter WRAP) CoC. Adherence to the WRAP ensures clean production and operation processes of MNCs. A clean corporate image towards final consumers may be enhanced. This would result beneficial for states, as MNCs would continue investing in their domestic territories, for MNCs as profits would increase, and for labor force engaged in the production processes as their working and living conditions can be improved.

A recent phenomenon is the inclusion of soft law in hard law instruments. Some RTAs are recently including provisions which encourage the voluntary adherence of CSR in internal policies of states and trade activities of MNCs.

5. Achieving EPZ compliance with the IEL. A Multilateral-Regional Synergistic Approach

To align EPZs with WTO Law, the export subsidy contingency should be reformed. This means allowing products to remain in the domestic market. The service sector should also be promoted inside EPZs as the ASCM only refers to trade in goods. Aligning with the WTO Law would allow for economic upgrading and product diversification in EPZs.

Compliance is also possible by utilizing RTAs as synergistic tools with the MTAs. RTAs may cover issues beyond MTAs while they still can comply with MTAs. EPZ exemption clauses could be included to allow for certain EPZ practices. Continuing the inclusion of internationally enforceable labor provisions also allows for EPZ compliance in relation to the regulatory incentives granted. Promoting a tripartite dialogue forum, similar to that of the ILO in RTAs would allow for governments, MNCs, and labor force to exchange voices for better trade practices and compliance with the IEL. Inclusion of CSR provisions in RTAs, while still keeping their voluntary nature of the soft law, would encourage public-private partnerships that would enhance EPZs compliance with the IEL. (END)