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FOR THE WORLD'S FREE ZONES***

CONTENTS: 1. Introduction. 2. The Free Zone concept. 3. The Free Zones regulation. 3.a The EU law on Free Zones and Free Warehouses. 3.b The Free Zones in the International law . 4. The evolution of Free Zones. 5. A case study: the Free Port of Trieste.

1. Introduction

In the latest 20 years Free Zones have been booming everywhere in the world:

TABLE 1 - THE FREE ZONES BOOM

GEOGRAPHICAL AREA	NO. OF 'ZONES' (including EPZs)
Europe	55
North America	713
Transition Economies (Central and Eastern Europe)	90
North Africa	23
Sub-Saharan Africa	64
Indian Ocean	3
Middle East	37
Asia	749
Central America	3300 (of which 3228 maquiladoras in Mexico)
South America	39
Caribbean	87
Pacific	14

Source: ILO (2003), EU Commission (2002).

* Relazione presentata alla terza edizione del Convegno mondiale sulle Zone Franche ('The Third World Freezone Convention'), Bruxelles 2-6 giugno 2003.

It is generally acknowledged that Free Zones are very important tools of an international economic policy which aims at developing free international commerce.

Free Zones promote economic well-being not only of the beneficiaries but of the whole economy of the host country in terms of job creation, attraction of foreign direct investment (FDI), boosting of exportation, technology transfer and of management know-how, regional development, industrialisation, etc.

TABLE 2 - EMPLOYMENT GENERATION OF FREE ZONES

<i>GEOGRAPHICAL AREA</i>	<i>EMPLOYMENT GENERATED (1999-2002)*</i>
Europe	43,599
North America (excl. Canada)	315,000
Transition Economies (Central and Eastern Europe)	480,590
North Africa	440,515
Sub-Saharan Africa	414,460
Indian Ocean	166,507
Middle East	328,932
Asia	36,285,033
Central America	4,535,557
South America	304,200
Caribbean	220,078
Pacific	13,590
TOTAL	43,548,021
	of which 30.000.000 in China alone

Source: ILO (2003) * 2002 or latest year available since 1999.

However many countries feel that their Zones are under threat: EU Member States had to cut down many traditional benefits to their Free Zones which would otherwise have come under the definition of, for example, state aids. WTO trade agreements (in particular the provisions on export subsidies) and the increasing dismantling of the importance of duties by the WTO also put the traditional incentives given by Free Zones at risk.

In particular, challenges and threats to Zones are related to:

- A) The Free Zones concept
- B) The Free Zones regulation

2. The Free Zone concept

The Free Zone (Free Port) concept is 2,000 years old and it is associated to those populations devoted to maritime navigation and free trade (the Chaldees, the Phoenicians, the Carthaginians, the Egyptians).

The Greeks brought the Free Port device to a level of development possibly comparable to that of modern times - the Romans too were not unappreciative of the Free Port as an instrument of stimulating commerce.

In the Middle Ages the Free Port concept was preserved and developed as a 'Free Town' and following the Crusades the Free Ports regained their importance in the development of trade from Europe to the Levant.

In the 17th and 18th Century Free Warehouses, Free Ports and Free Towns were created all over Europe, in Russia and in the Colonies. Examples include Hamburg, Trieste, Livorno, Antwerp, Rotterdam, Copenhagen, Odessa, Singapore, Hong Kong, etc. At the end of the World War II the Free Port of Trieste was established by international treaty to ensure free international trade.

In the latest 20 years Free Zones have become a rapidly developing global phenomenon which affects an increasing share of international trade flows and employs a growing number of people.

The concept of the "Free Zone" itself can be regarded as a challenge to Zones because:

A) THERE ARE MANY DEFINITIONS OF 'FREE ZONES' WORLD-WIDE:

"A Free Trade Zone (Free Port) is a neutral, stockaded area where a shipper can put down his load, catch his breath, and decide what to do next." (E. CELLER)

"A Free Zone is an international territory which is not subject to the jurisdiction of the territorial state with regard to the circulation of goods and services, customs treatment, labour law and economical laws, and which can be deemed as an autonomous legal system disciplined primarily by international trade custom and usage." (F.A. QUERCI)

"Free Zone means a part of the territory of a Contracting Party where any goods introduced are generally regarded, insofar as import duties and taxes are concerned, as being outside the Customs territory." (REVISED KYOTO CONVENTION - ANNEX D.2)

"Free Zones mean part of the Customs territory of the Community, separate from the rest of that territory, in which non-Community goods placed in them are considered, for purposes of the application of import duties and commercial policy import measures, as not being within the Customs territory of the Community provided they are not released for free circulation or entered under another Customs procedure under the conditions laid down in this Regulation." (COUNCIL REGULATION (EEC) NO. 2504/88 OF 25 JULY 1988 ON FREE ZONES AND FREE WAREHOUSES)

"Export Processing Zones are fenced-in industrial estates specialising in manufacturing for export and offering their resident firms free-trade conditions and a liberal regulatory environment." (WORLD BANK, 1992)

"An Export Processing Zone could be defined as a clearly demarcated industrial zone which constitutes a free trade enclave outside a country's normal Customs and trading system where foreign enterprises produce principally for export and benefit from certain tax and financial incentives." (INTERNATIONAL CONFEDERATION OF FREE TRADE UNIONS, 1996)

"Export Processing Zones are industrial zones with special incentives set up to attract foreign investors, in which imported materials undergo some degree of processing before being (re-) exported again." (ILO, 1998)

3. The Free Zones regulation

There is no uniform legal discipline of Free Zones worldwide: states are free to set up Zones and grant them with infrastructure, Customs, fiscal and financial advantages, although Member States of the EU, WTO, FTAA-ALCA, MERCOSUR, etc. must comply to the provisions regarding tariff and non-tariff barriers, unfair trade practices, export subsidies, state aids, agricultural and industrial activities, rules of origins, etc.

No general exception has ever been outlined for Free Zones such as e.g. the group exception from the application of art. 81 of the European Union Treaty granted to Liner Conferences by EEC Regulation 4056/1986 (justified by the "utility" of the conference system for the international maritime liner transport) .

There is a lack of international law and conventions on Free Zones, as well as a lack of a global approval mechanism of Free Zones.

Even though Free Zones are created around the world for different reasons (job creation, FDI attraction, transfer of knowledge know-how, regional development, etc.), international uniformity of regulation is required in order to keep up with international competition and to outline a best practice to structuring zones.

Free Zones regulations and functioning are supervised by international organisms (ILO, UNCTAD, WTO, UNIDO, etc.) but there is no representation of the Free Zones within international organisations.

WTO rules do not regulate Free Zones as such although all WTO Member States must adapt their Free Zones discipline (on the export of goods) to the SCM Agreement on subsidies and countervailing measures.

In general, the options for Zones have been narrowed down by EU and WTO law, especially because Free Trade Zones have never been granted a general exception in WTO agreements and in the EU legislation.

3.a The EU law on Free Zones and Free Warehouses

Among the European Community legal framework of Free Zones and Free Warehouses are to be mentioned:

- Council Directive (EEC) No. 69/75 of 4 March 1969 on the harmonisation of legal, regulatory and administrative dispositions for the Free Zone regime;
- Council Directive (EEC) No. 71/235 of 21 June 1971 on the harmonisation of the provisions laid down by law, regulation or administrative action relating to the usual forms of handling which may be carried out in customs warehouses and in free zones;
- Council Regulation (EEC) No. 2504/88 of 25 July 1988 on Free Zones and Free Warehouses;
- Commission Regulation (EEC) No. 2562/90 of 30 July 1990 laying down provisions for the implementation of Council Regulation (EEC) No. 2504/88 on Free Zones and Free Warehouses;
- Council Regulation (EEC) No. 2913/92 of 12 October 1992 establishing the Community Customs Code;
- Commission Regulation (EEC) No. 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code;
- Commission Regulation (EC) No. 3665/93 of 21 December 1993 amending Commission Regulation (EEC) No 2454/93 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community customs code;
- Council Regulation (EC) No. 122/96 of 22 January 1996 establishing favourable tariff treatment for imports of certain goods into the free zones of Madeira and the Azores by reason of their end use;
- Commission Regulation (EC) No. 1482/97 of 28 July 1997 laying down provisions for the free zone of Madeira for the implementation of Council Regulation (EC) No. 122/96 establishing

favourable tariff treatment for imports of certain goods into the free zones of Madeira and the Azores by reason of their end-use;

- Regulation (EC) No. 2700/2000 of the European Parliament and of the Council of 16 November 2000 amending Council Regulation (EEC) No. 2913/92 establishing the Community Customs Code;
- Commission Regulation (EC) No. 2454/93 of 4 May 2001 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code.

The EU regulation on Free Zones (definition, entry of goods, control, operation, removal of goods, re-exportation, destruction and abandonment, etc.) is in accordance with the Kyoto Convention on the simplification and harmonisation of Customs procedures of 18 May 1973, amended by the Protocol of Brussels of 26 June 1999.

EU Free Zones (and Free Warehouses) are parts of the Customs territory of the Community and separated from the rest of it in which:

(a) Community goods are considered, for the purpose of import duties and commercial policy import measures, as not being on Community Customs territory, provided they are not released for free circulation or placed under another Customs procedure or used or consumed under conditions other than those provided for in Customs regulations;

(b) Community goods for which such provision is made under Community legislation governing specific fields qualify, by virtue of being placed in a Free Zone or Free Warehouse, for measures normally attaching to the export of goods.

In the EU there are many alternatives to Customs Free Zones: Temporary importation and storage, Customs warehousing, Inward processing, Processing under Customs Control, Release for Free Circulation under the End Use Provisions. They can also be carried out within Free Zones.

As a matter of fact, traditional benefits attached to Free Zones (e.g. fiscal benefits to industrial production in Spain) have been cut down by States after entering the EU.

TABLE 5 - EU FREE ZONES

<i>COUNTRY</i>	<i>TYPE I FREE ZONES</i>	<i>TYPE II FREE ZONES</i>
Denmark	Copenhagen Free Port	
Germany	Bremen Free Port, Cuxhaven Free Port, Deggendorf Free Port, Duisburg Free Port, Emden Free Port, Hamburg Free Port, Kiel Free Port	
Greece	Piraeus Free Zone, Thessaloniki Free Zone, Heraclion Free Zone	
Spain	Barcelona Free Zone, Cádiz Free Zone, Vigo Free Zone, Las Palmas de Gran Canaria Free Zone	
France	Bordeaux Free Zone	
Italy	Trieste Free Port, Port of Venice Free Zone	
Portugal	Madeira-Caniçal Free Zone	
Finland	Lappeenranta Free Zones, Hangan Free Port	
Ireland		Shannon Free Zone, Ringaskiddy Free Port
United Kingdom		Liverpool Free Zone, Prestwick Airport, Ronaldsway Airport (Isle of Man); Southamton Free Zone, Tilbury Free Zone, Port of Sheerness Free Zone, Humberside Free Zone

Source: EU Commission Communication 2002/C 50/05.

3.b The Free Zones in the International law

The main international conventions affecting the regulation and functioning of Free Zones worldwide are:

A) The REVISED KYOTO CONVENTION ON THE SIMPLIFICATION AND HARMONISATION OF CUSTOMS PROCEDURES - ANNEX D.2

It contains the definition of "Free Zone" and states that goods introduced in the Free Zones are regarded as being outside the Customs territory insofar as import duties and taxes are concerned.

Detailed provisions on the functioning of Free Zones (establishment, control, admission of goods, operations, security, etc.) are also given.

Under the Kyoto Convention Free Zones are tools of an international economic policy which aims at developing international trade through the simplification of day-to-day customs procedures and the relief from import duties and certain taxes. However, Free Zones are considered only from the Customs incentives point of view.

B) The WTO AGREEMENT ON SUBSIDIES AND COUNTERVAILING MEASURES

It provides detailed provisions on export subsidies, countervailing measures, authorised remedies, institutions, notification and surveillance, special and differential treatment of Developing Country Members.

The SCM Agreement gives a very broad definition of "subsidy" (art. 1.1) e.g. grants, loan, loan guarantees, fiscal incentives such as tax credits, income or price support, more favourable internal transport and freight charges on export shipments, etc.

Two types of subsidies are permitted: a) prohibited (art. 3); b) actionable (art. 5).

The SCM Agreement disciplines only the subsidies related to goods and not those related to services, which are not prohibited by the General Agreement on Trade in Services (GATS) either.

A special and differential treatment is reserved to Developing Country Members (art. 27): the provisions on prohibited subsidies shall not apply to the Developing Country Members listed in Annex VII (LDCs and other countries when their GNP per capita reaches \$ 1,000 per annum) and to other Developing Country Members for a period of eight years from the date of entry into force of the WTO Agreement.

The Doha Decision of 14 November 2001 grants the extension of export subsidies by certain Developing Countries Members on an annual basis until 31 December 2007.

In conclusion, many Free Zones typical legitimate incentives and benefits will have to be removed under WTO initiatives, although there should be a general exception for Zones in WTO agreements in consideration of the positive effects of Zones on regional development.

4. The evolution of Free Zones

The growth of Free Zones is one of the most significant economic, social and institutional innovations of the latest 20 years.

There are a lot of successful Free Zones all over the world, e.g.:

- UAE Dubai Jebel Ali Port & Free Zone employs 50,000 people for a total turnover of US\$ 10 billion and 2,200 licensed firms;
- China Hong Kong Free Port is the world's busiest container port: ship turnaround performance is among the very best in Asia and port charges are among the lowest in the world;
- Panama Colon Free Zone is the largest Free Trade Zone in the Western Hemisphere and counts more than 500 licensed firms from all over the world; about 80% of Panama's trading activities are carried out in the Zone, which has been defined as "el Corazon del comercio mundial";
- Singapore is a major world trading centre and the busiest Free Port in the world in terms of shipping tonnage and tonnes of bunkers, as well as the third world's largest oil refining centre

- Mauritius Free Zone has enabled a small isolated island to develop an industrial basis which has lowered unemployment in the country from 20% in 1970 to 3% nowadays;

- Ireland Shannon Free Zone has the highest rate of return of US manufacturing in Europe thanks to the financial incentives offered;

- China Tianjin Port Free Trade Zone attracts foreign investors from 94 countries with a total investment of over US\$ 5 billion;

- Nigeria Onne Oil & Gas Free Zone has achieved 76 registered licensees in the first 4 years of activity and employs 4,700 people, with a private/public investment of US\$ 312 million;

- In Turkey the total value of trade within the 17 Free Trade Zones exceeds US\$ 14 billion and there are 3,000 users;

- Sri Lanka EPZs generate 95% of exports of the whole country;

- Malaysia EPZs concentrate 10% of world TV equipment exports, which reached US\$ 2.3 billion in 1995.

The economic, financial, monetary and social advantages of the Free Zones for the global economy are higher than the disadvantages (e.g. competition distortion in the market, poor labour conditions, restriction of Trade Unions rights, etc.).

A very interesting economic study on the direct benefits of Free Zones on the whole economy (not only on the beneficiaries) has proven that exports and salaries increase if there is a relief from tax on capital next to the elimination of import and export taxes (See NORA BALZAROTTI - MARTIN CICOWIEZ, "*Zonas Francas: su efecto sobre el bienestar economico. Estática comparada y equilibrio general computado*", in http://www.bancoempresario.com.ar/IEA_Web/seminario/Seminario_Balzarotti.pdf).

Free Zones will continue to play a very important role in the future especially in the Developing Countries and in the Transition Economy Countries (e.g. ex-Soviet Union, Eastern European Countries), where they will continue tackling unemployment and poverty. Eastern European Countries joining entering the EU will have to pass laws to adapt the existing Free Zones legislation to EU regulations. Thus Free Zones and

Warehouses will have to be operated under the same conditions as those of the rest of the Community and this will certainly not help post Communist economies to maximise the chances for growth.

The Free Zones of the future will have to come to terms with sector integration, in particular with WTO and OECD initiatives.

Despite fiscal incentives packages are getting bigger and more Zones are being set up all over the world, WTO Members will have to create alternatives to the traditional model of Free Zone based on Customs benefits and tax breaks: in the EU Free Zones have already undergone a process of evolution and adaptation to EU laws which has, for example, turned the traditional Spanish Industrial Free Zones into modern logistics platform for trade with South America.

In the future, Free Trade Zones should be granted a general exception in WTO agreements, ensuring that they are not treated as distorting markets. Such a legal exception would be primarily justified by the acknowledgement of the important role that Free Zones play and have always played on the world's economy in the framework of trade liberalisation and free circulation of goods.

An increasing importance will be played by Logistics Free Zones, Science and Technology Parks and Free Zones, Tourist Free Zones, etc.

Free Zones represent also a very interesting form of integration of Port-Systems e.g. the North Adriatic Port System (Port of Trieste-Port of Koper-Port of Rijeka).

Cross-Border Zones have also played an important role in the elimination of physical, political and institutional barriers among countries (e.g. McAllen Foreign Trade Zone, Shenzhen Special Economic Zone, etc.).

In conclusion, Free Zones will "survive" but a process of adaptation and evolution will be necessary, especially in the absence of a dedicated international regulation on Free Zones or at least of a general exception for Zones in WTO agreements.

TABLE 6 - MAIN FEATURES OF THE FREE ZONE
WHICH WILL "SURVIVE"

- Location
- Infrastructure
- Government stability
- Transparent laws and regulations
- Skilled labour
- Social protection and conditions of work
- 'Specialisation' of Zones: e.g. 'Single-commodity Zones' (Nigeria Onne Oil & Gas Free Zone, Coffee Zone of Zimbabwe), or 'Single-industry Zones' (jewellery zone in Thailand, leather zone in Turkey)
- Zone marketing
- Efficient services
- Logistics
- Information technology
- Efficient telecommunications
- Synergy between bonded areas and the host country

5. A case study: the Free Port of Trieste

The Free Port of Trieste is strategically located in the North Adriatic Sea and consists of 5 Free Trade Zones, 3 of which have been allotted to commercial activities, namely the Old Free Area, the New Free Area and the Timber Terminal. The remaining two, i.e. the Mineral Oils Free Area and the "Canale di Zaule" Free Area, are used for industrial activities. In the sector of industrial traffic, the Transalpine Pipeline Terminal (TAL) plays a special role, serving Austria, Germany and the Czech Republic. The TAL Terminal has a capacity of over 50 million tons a year, with pumping and storage stations with a capacity of 2 million tons.

Of the 2,304,000 m² of port area, 1,765,000 m² are Free Zones, 925,000 m² are warehouses and storage areas, 500,000 of which are covered.

TABLE 7 - BASIC INFORMATION ON PORT FACILITIES

Overall dock area	2,304,000 m ² of which, 1,765,000 m ² of Free Port Zone:
Depth not exceeding	18m
Warehouses	21
Quay sheds	25
Open-sided sheds	26
Covered storage areas	500,000 m ²
Uncovered storage areas	425,000 m ²
Quays	12 km
for tankers	5
for industrial use	5
for passenger ships	2
Dry docks	4 max. size 295x56x12 m
Total length of internal railway track	70 km

TABLE 8 - PASSENGER MARITIME TRAFFIC (2002)

Ferry/RO-RO	89%
Local public maritime transport	5%
Cruise ships	4%
Tourist Lines	2%
Tot. units	315,254

TABLE 9 - MARITIME TRAFFIC (2002)

Liquid bulk	76%
Solid bulk	7%
General cargo	17%
Tot. tons	47,173,863

As for the legal discipline, the Free Port of Trieste is the only Free Port in the world established by international treaty, Annex VIII of the Peace Treaty of Paris of 10 February 1947, which may be considered the completion of the effort of elaborating a global discipline of Free Ports, interrupted by the League of Nations

(Conference of Barcelona of 1921) and never continued by the United Nations.

Therefore, the European Union legislation on Free Zones and Free Warehouses does not apply to the Free Port of Trieste, according to article 307 (formerly article 234) of the Treaty of the European Union.

Main advantages for goods and users deriving from the special status of Free Port of Trieste are:

- freedom of transit and equal availability of the Port and transit facilities by all international trade, which implies that goods arriving by sea are freely accepted into the Free Port Zones regardless of origin, destination or nature area (except in case of public health or security limitations) and are exempt from duties and obligations other than those due for any service rendered as long as they remain within the port area;

- as far as customs are concerned, the operator is free to decide when to declare that the final destination of goods is either in transit to third countries or imported into the European Union market;

- goods can be stored within the Free Port Zones without limit of time and can be exported to overseas destinations without the need for EU Customs declaration;

- foreign goods stored inside the Free Port area may undergo the so called "usual" processing, such as packing, re-packing, sampling, etc. free of any duties. Industrial processing of the same goods is admitted but is subject to the authorization of Customs offices or of the Italian Ministry of Finance, which is granted depending on the final destination of processed goods. The advantage users enjoy when carrying out such operations in the Free Port as opposed to the normal temporary import procedure lies in avoiding advance payment of customs duties usually paid on goods temporarily imported;

- Customs duties and other fiscal duties such as "Dazi" (Taxes), "I.G.E." (Turnover Tax) and "I.V.A." (Value-Added Tax)

relating to goods imported into the European Union territory via the Free Port of Trieste may be settled over longer periods of time up to a maximum of 6 months at reduced interest rates fixed periodically by the Ministry of Finance by means of special Decrees;

- goods entering the Free Port by road from the EU territory are regarded as export goods (hence they may be shipped at any time, the only exception being that of goods escorted upon request of the shipper in order to obtain special fiscal exemptions), whereas goods coming by land from non-EU countries are regarded as transit goods;

- commercial vehicles coming from or bound for the Port of Trieste across Italy's borders with Austria and Slovenia benefit from facilitated transit;

- simplified Customs procedures at the Italian borders also apply to goods carried by train;

- against the security of particular types of goods deposited in the warehouses, commercial operators can apply for warrants, i.e. short-term advances from banks.