Free Zones, COVID-19 Lockdown, and 'the Morning After'

By:

Nojeem Amodu

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Following the growing number of countries battling with the novel coronavirus (COVID-19) outbreak outside China, the World Health Organization on 11 March 2020 declared the COVID-19 outbreak as a pandemic. In the absence of a known cure or proven vaccine, palliative policy responses in many countries towards containing the outbreak include recommending social distancing, adopting a work-from-home policy, government receiving and distributing food items and medical supplies to the most vulnerable, border closure, economic shutdown and lockdown among others. There are debates about the effectiveness of these palliatives, especially the border closure and lockdown in Africa.

While this article does not share in the zero-sum mentality that it is either countries adopt lockdown, or they do not (as graded levels of lockdown smartly mixed with other measures may prove effective), it, however, questions the extension of the COVID-19-inspired lockdowns to free zones. Will exempting free zone operations from the lockdown areas erode the gains otherwise recorded by many host states? Can governments stimulate the floundering macro economy using the zone scheme? This article will provide a few insights.

As an investment policy mechanism, export-oriented strategies are designed to promote industries that orient a substantial part of their production to a foreign market (Amado, 1989: 82). The free zone scheme was traditionally developed as an export-oriented strategy. Different free zone models have however developed over time, emerging with varying but overlapping features and include, but not limited to Free Industrial Zones, (FIZs), Free Trade Zones (FTZs), Export Processing Zones (EPZs), Customs Free Zones (CFZs), Free Economic Zones (FEZs), Special Economic Zones (SEZs), industrial zones or parks and many others (Amodu, 2018: 31). For the purpose of this article, the phrase 'free zone' is adopted to represent all of them.

What are free zones?

Beyond the common misconception that they are merely tax or customs duty exemption areas, free zones are (usually offshore) flexible policy enclaves construed by legal fiction to be separate from other parts of the host state. Free zones, however, have interrelated legal, regulatory and fiscal incentives with the host state, geared towards attaining industrialization in the host state (Amodu, 2018: 31). A free zone has also been described as 'a delimited geofigureic area within a country with a zone management outfit providing infrastructure and services to tenant companies, where the rules for doing business are different - promoted by a set of policy instruments that are not generally applicable to the rest of the country' (Wong and Buba, 2017: 1).

The idea behind the free zone scheme transcends export-promotion objectives, foreign exchange generation, or even the attraction of foreign investment. Particularly for this article, by carving out specifically legislated areas, a developing country can gracefully operate a dual economy (Bettwy, 1985: 56). This is why states adopting the free zone investment strategy provide in the zones (and where necessary, solicit relevant support from the promoters, corporations or individuals, of such zones) the so-called quasi incentives. These incentives include critical infrastructure, banking facilities, security, hospitals, good road network, schools, restaurants, among others independent of economic and business operations outside the zones. These services are provided to promote dual or multiple economy frameworks and limit interaction with the mainstream economy in the customs territory.

Although the movement in and out of free zones are generally controlled, zones do not exist in isolation. The zone is a legal fiction because territorially, it physically exists within the host state but is accorded a uniquely flexible (though not necessarily or constantly conflicting) legislative framework different from that applicable in the customs territory. It is therefore not out of place for legislative and regulatory requirements applicable in the host state customs territory to also be applicable in the zones (to the extent not excluded by enabling laws in the zones) especially where such requirements do not countervail the purpose for which such zones were created.[1]

Unlike the early single-factory export processing zones, zone operations are no longer restricted within any sector or industry of the economy. Many host states now experiment and find an innovative use for zone operations by designating (or expanding existing ones) new policy enclaves as smart cities, and special economic zones to address specific economic, health or industrial needs from time to time. Such innovative use has not only been successful in China and the Middle East (e.g. Dubai) but also replicated in other parts of the world (Xiaoyang, 2015: 4). Towards securing socio-economic rights together with important health and safety requirements, an effective governance and management framework closely monitored by competent zone management companies and regulators underpin successful zone operations (Wong and Buba, 2017: 44). While it may seem uneasy to determine whether free zones have achieved their specific objectives, empirical studies have nonetheless established that despite not displaying exceptional economic trajectories, the zone scheme has positively affected the economic performance in the zones and host state surrounding areas (Wong and Buba, 2017: 6). Clearly, well designed and managed free zone operations can serve as an effective stimulus to the struggling economy of host states.

Free zone operations during the pandemic and lockdown?

From the foregoing, it appears host states with effective zone management and regulatory structures will cope better in the wake of the COVID-19 pandemic and associated lockdown. While it is extremely challenging to manage the health crisis in the customs territory, as the world has realized, the very nature of the policy enclaves of free zones with independent infrastructure and controlled movement admits of better coping mechanisms not just for residents in such zones but also for the larger economy of the host state. While health guidelines and regulations applicable in the customs territory will be useful and should not be sacrificed in the zones, the strictly controlled movement and services within free zones by competent zone management companies and regulators allow host states to monitor health and safety zone standards towards containment of any further outbreak within the zones. This is useful because free zone operators, enterprises and their workers have adequate infrastructure (including housing, medical, banking, security among others) within the zones to remain therein, and with limited interaction with the customs territory.

Again, there is also adequate infrastructure to manage the limited interaction with the customs territory in terms of transporting produced materials or sourcing raw materials from the customs territory. Therefore, if the economic or commercial activities in the zone are carried out adhering to relevant medical guidelines issued by competent regulators within the zones, essentially needed commodities, goods and services in the customs territory may be produced in the zones and safely exported for use in the customs territory and beyond. This arrangement supports needs in the customs territory but with very minimal and safely managed interaction with it. Such essential goods may vary from one society to the other, and at different times and on this note, the Kenyan Ministry of Health already announced plans for mass production of personal protective equipment (PPE’s) to be rolled out from a free zone after relevant compliance certification. In the same vein, rather than lockdown all construction activities, countries like Nigeria with heavy dependence on foreign refined crude products may save herself some foreign exchange reserves by encouraging and intensifying constructions of petroleum refinery and polypropylene plants during the pandemic within her well-regulated and managed free zones.

Inevitable that states around the world will exclude sensitive sectors from the lockdown areas to avoid total economic paralysis. I argue that extending such exemptions to free zone operations in Africa provides a unique framework to stimulate the macro economy sustainably. This is because essential goods and services may be produced during the lockdown in controlled enclaves where zone regulators are better placed to manage health risks and challenges associated with COVID-19. More so, these enclaves offer host states an opportunity to avoid bureaucratic burdens in the customs territory, thereby, boosting productivity at such a critical time. The zones, by their design, also provide host states with the added advantage of better infrastructural facilities and a reduced population to trace easily and nip in the bud any outbreak of the COVID-19 virus in the zones.

The economic dualism afforded by the zone scheme not only guards against total economic paralysis during the lockdown but also reduces the communal geographic spread of the virus at the minimum. The little or minimal economic or commercial activities in such zones under carefully designed medical guidelines may not only constitute what host states require to keep some critical parts of their systems afloat while gradually easing out the lockdown but may also help in kick-starting economic recovery after the lockdown with very minimal risk of relapse or communal spread.

Conclusion

In conclusion, the above does not eliminate the risk of the disease spreading from zones to customs territory and *vice versa*. However, what it does is reduce transmission risks within such enclaves with developed supporting infrastructure while critically goods and commodities are safely produced. This will appear a better risk management strategy than an absolute lockdown or randomly granting exemptions to sectors and industries in the struggling customs territory.

Apart from the challenges presented by the pandemic, governments in developing economies have the current difficulty of providing essential public goods and social services even during normalcy. How quickly economies recover after the crisis may depend on the nature of coping initiatives employed during the pandemic. It is therefore pertinent that governments (especially in the global South) revisit their free zone policy architecture to create a reliable alternative economy with which to stimulate the macro economy especially when the risks associated with sustaining economic activities in the customs territory may be too high. In situations such as the present pandemic, while reducing to the barest minimum exemptions granted within the customs territory, free zone operations could be flexibly expanded and operators flexibly allowed to pivot, as far as possible, into other essential activities such as farming, oil refining, food production and distribution, medical facility construction or equipment manufacture among others depending on the particular state need at any given time.

As earlier mentioned, with the added advantage of the exclusion of otherwise burdensome bureaucratic regulatory requirements in the customs territory and a reduced population of actors to contend with, the production of essential goods and services required during the lockdown within zones constitutes a better coping mechanism for host states to address crises in their customs territories. Governments without functional and effective free zone framework may want to develop one to better prepare for future pandemics. For those with functional quasi-incentives and therefore capacity of reducing communal spread, such governments need to engage zone regulators and management companies to encourage commercial activities in such highly monitored policy enclaves as they might constitute the saving grace the morning after pandemics.

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[1] For instance, see sections 21(1)(b) and 24(1) of the Nigeria Export Processing Zones Act, Cap. N107 Laws of the Federation of Nigeria 2004; see also, the 17 March 2020 decision of the Nigerian South-South Zone Tax Appeal Tribunal sitting in Benin in the unreported case of *West Atlantic Shipyard Limited v. Federal Inland Revenue Service* Appeal No. TAT/SSZ/005/2018.