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**Free Trade Zones as Valid Tools to Promote Institutional  
Innovation in the People's Republic of China**

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*A tutti coloro che da vicino, in terra, o da lontano, in cielo, hanno saputo tenermi la mano.*

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## List of Abbreviations

<b>Abbreviation</b>	<b>Meaning</b>
ADR	Alternative Dispute Resolution
AIC	Administration for Industry and Commerce
BRI	Belt and Road Initiative
EFTA	European Free Trade Organization
EPZ	Export Processing Zone
FDI	Foreign Direct Investment
FIL	Foreign Investment Law
FTZ	Free Trade Zone
GHG	Greenhouse Gas
HFTP	Hainan Free Trade Port
IIT	Individual Income Tax
IP	Intellectual Property
MOFCOM	Ministry of Commerce of the People's Republic of China
NAFTA	North America Free Trade Area
NDC	Nationally Determined Contribution
OECD	Organization for Economic Cooperation and Development
PFTZ	Pilot Free Trade Zone
PRC	People's Republic of China
RMB	Renminbi
SAR	Special Administrative Region

SCIA	Shenzhen Court of International Arbitration
SEZ	Special Economic Zone
SHFTZ	Shanghai Free Trade Zone
SHIAC	Shanghai International Arbitration Centre
SHPFTZ	Shanghai Pilot Free Trade Zone
SIAI	Shenzhen International Arbitration Institute
UNCITRAL	The United Nations Commission on International Trade Law
WB	World Bank
WTO	World Trade Organization

## Chinese Terms Glossary

Chinese Term	Pinyin	Translation
改革开放	Gǎigé kāifàng	Reform and Opening-Up
高新技术开发区	Gāoxīn jìshù kāifā qū	High-Tech Development Zone
关系	Guānxì	Relationships, Social Connections
国家级新区	Guójiā jí xīnqū	State-Level New Area
行政特区	Xíngzhèng tèqū	Special Administrative Region
虚拟优租房	Xūnǐ yōu zūfáng	Virtual Preferential Renting Program
经济技术开发区	Jīngjì jìshù kāifā qū	Economic and Technological Development Zone
经济特区	Jīngjì tèqū	Special Economic Zone
区	Qū	Area, Region, Zone
世界经济特区	Shìjiè jīngjì tèqū	Foreign Special Economic Zone
授权立法	Shòuquán lifǎ	Delegated Legislation
实体优租房	Shítǐ yōu zūfáng	Physical Preferential Renting Program
特区	Tèqū	Special Area/Zone
特殊政策	Tèshū zhèngcè	Special/Exceptional Policies
沿海开放城市	Yánhǎi kāifàng chéngshì	Coastal Open City
一国两制	Yīguóliǎngzhì	One country, Two Systems
优惠政策	Yōuhuì zhèngcè	Preferential Policies

中国特色经济特区	Zhōngguó tè sè jīng jì tè qū	Special Economic Zone with Chinese Characteristics
中国特色社会主义	Zhōngguó tè sè shè huì zhǔ yì	Socialism with Chinese Characteristics
自由贸易区	Zì yóu mào yì qū	Free Trade Zone
自由贸易试验区	Zì yóu mào yì shì yàn qū	Pilot Free Trade Zone

# 简介

从上世纪 80 年代初开始，中国政府逐步在全国建立了多种类型的经济特区，以促进中国经济从中央计划型经济转向市场经济，从相对封闭的经济体系融入到全球经济体系。

虽然经济特区并非完美的工具，也产生了一些负面影响，例如某些地区人口过多、不平等加剧以及严重的环境问题，但不可否认的是，中国在建立经济特区方面非常成功。经济特区建立后，中国不仅在不同领域试验性实施新型和创新政策，引进资本、现代技术和管理技能，增加当地就业机会，促进出口和吸引了大量外国直接投资，同时中央政府也有效控制了变革的节奏以及贸易自由化带来的负面影响。

2013 年，中国政府设立了新一代经济特区，其试点项目为上海自由贸易区 (SHFTZ)。一些专家称，2013 年中国政府设立新型自由贸易区的主要原因之一是为中国创建一种新的发展模式；此模式不再基于复制过去的发展道路，过去中国的经济体量较小且不够发达。本文分析了中国政府通过新一代自由贸易区引入的一些最新创新性措施，确定自由贸易区是否仍然可作为促进中国全面创新的有效工具。

第一章的重点是介绍有关背景资料，本章中不仅阐述了经济特区的一般概念及其在发展中国家的实施历史，还详细介绍了经济特区在中国的具体特点。本章也讨论了不同类型的“特区”在中国的发展，解释其实施背后的基本原理，以及与国际标准的不同之处和中国制度特色。在本章中，特别讨论了“经济特区”一词的翻译问题，本词在英语和汉语中具有不同的含意。本章最后简要介绍了中国在过去几十年中，尤其是 2008 年金融危机之后如何改变经济战略；此段有助于阐明 2013 年实施自由贸易区的实施背景。

第二章特别关注中国从 2013 年初开始设立的新一代自由贸易试验区。讨论主题不仅涉及自由贸易区给予公司和投资者的一般优惠政策，也包括对这些领域测试的若干创新分析，如市场准入从正面清单转向负面清单的方法，以及中国法律制度在非诉讼纠纷解决机制方面的重要进展步骤，特别是注重于规则或仲裁。

最后，第三章中主要讨论中国的人才引进及人才引进政策，特别是自由贸易区中。本章开始部分介绍过去几十年中劳动力和工作变化的总体概况，主要强调人力资本对促进创新和发展的的重要性。后续段落主要关注中国吸引移民和人才的方法，尤其是关

于签证政策、永久居留权和其他给予外国人才的优惠政策等。本章最后简要介绍中国自由贸易区为进一步提升吸引力并成为全球人才中心的一些重要措施。

总之，本文从经济特区在中国改革开放初期代表中国经济发展和增长的重要引擎这一假设出发，目的是阐明经济特区，特别是自由贸易区是否仍然可作为促进中国整体制度创新的有效工具，还是在当今中国新型经济和社会环境中已经过时。

## Introduction

Starting from the early 1980s, China's Central Government progressively introduced several types of Special Economic Zones (SEZs) throughout the country to promote the progressive moving away of the country's economy from a central-planning configuration to a market-based one, and from a relatively closed system to one that is increasingly integrated into the world economy.

Even though Special Economic Zones are not perfect tools and their implementation entails several downsides such as overpopulation of certain areas, spiking inequality and severe environmental concerns, it is undeniable that China was very successful in their implementation. Thanks to the introduction of SEZs, the country was able to test new and innovative policies in different fields, acquire capital, modern technologies and management skills, create local job opportunities, promote exports and attract huge quantities of FDI, while at the same time allowing the Central Government to control the pace of change and the downsides that come with trade liberalization.

In 2013, the Chinese government launched a new generation of Special Economic Zones whose pilot project was the Shanghai Free Trade Zones (SHFTZ). According to several experts, one of the main reasons that led the Chinese government to create a new generation of FTZs in 2013 was the necessity to create a new model of development for the country; a model no longer based on the replication of the past development path from when China's economy was still relatively small and undeveloped. This dissertation analyzes some of the most innovative aspects introduced by the Chinese Government through this new generation of FTZs, to determine whether Free Trade Zones can still be considered valid tools to promote innovation in the Chinese panorama.

Chapter 1 focuses on providing useful background information regarding not only the general concept of Special Economic Zones and the history of their implementation in developing countries but also detailed information regarding the specific characteristics that SEZs took on in the Chinese panorama. The Chapter discusses the development of different types of "Special Zones" in the Chinese territory explaining the rationale behind their implementation and how they differ from international standards, representing a peculiarity of the Chinese system. In this chapter, particular attention is given to the problem of translation of the term "Special Economic Zone" as it is used in different ways in the English and Chinese languages. Chapter 1 is then concluded with a brief overview of how China changed its economic strategy in the

last decades and mainly after the financial crisis of 2008; this passage is necessary to introduce the context in which Free Trade Zones were implemented in 2013.

Chapter 2 specifically focuses on the new generation of Pilot Free Trade Zones introduced in China from the beginning of 2013. The main topics discussed cover not only the general preferential policies granted to companies and investors by Free Trade Zones but also the analysis of several innovations tested in these areas such as the shift from a Positive List approach to a Negative List approach for market entry and the important steps forwards accomplished by the Chinese legal system in terms of alternative dispute resolution, particularly focusing on the topic of arbitration.

Finally, Chapter 3 covers the topic of talent attraction and talent attraction policies in China and particularly in Free Trade Zones. Starting from a general overview of how the world of work and labor changed in the last decades, the chapter underlines the importance of human capital to promote innovation and development. In the following paragraphs, the attention is focused on the Chinese approach to immigration and talent attraction, with a particular focus on the preferential policies granted to foreign talents in terms of visa policies, permanent residency and several other aspects that should attract them. The chapter is closed with a short overview of some learning points for China's Free Trade Zones to further boost their attractiveness and become global hubs for talent.

In conclusion, starting from the assumption that Special Economic Zones have represented an important engine of development and growth for the Chinese economy during the first period of reforms and opening up of the country, the aim of this dissertation is that of understanding if SEZs and in particular Free Trade Zones can still be considered as valid tools to promote institutional innovation in the Chinese Panorama or if they are to be considered obsolete in the new economic and social environment that characterizes China today.

# CHAPTER 1

## Overview of Special Economic Zones: Definitions, History and Implementation in China

### 1.1 The Concept and History of Special Economic Zones

#### 1.1.1 Introduction

Since their implementation during Deng Xiaoping's era, Special Economic Zones (SEZs) in China have been a valid tool to promote the progressive moving away of the country's economy from a central-planning configuration to a market-based one, and from a relatively closed system to one that is increasingly integrated into the world economy.

Judging by China's economic performance during the last decades, many are led to believe that the introduction of Special Economic Zones in the late 70s has been a valid tool to promote economic innovation and openness in the country.

As Wei Ge reports<sup>1</sup>, during the period 1979 to 1997, real GDP in China grew at an average rate of 10% per annum, unmatched in any period in China's history and unparalleled by the performance of any other economy in transition. In that period, the country emerged as the most dynamic and fast-growing economy in the world and one of the most powerful forces driving development in the Asia-Pacific region.

Nowadays we know that, even though Special Economic Zones proved to be a surprisingly efficient ally in the integration of China's economy into the world economy and have certainly helped the country's economy to achieve a breathtaking expansion with the consequent improvement of standards of living of the population, they are not perfect tools.

First of all, GDP is not a perfect indicator of the general well-being of the population and the general impression that China's Special Economic Zones are a success all-around is an

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<sup>1</sup> WEI, Ge, "*Special Economic Zones and the Economic Transition in China*", World Scientific, (1999) [https://books.google.it/books?hl=it&lr=&id=cnbVCgAAQBAJ&oi=fnd&pg=PR5&dq=Special+Economic+Zone+s+And+The+Economic+Transition+In+China&ots=JKU-nZoOKV&sig=CdpSJ7PKtm\\_8-ACvCd4Xvef8zYo#v=onepage&q=Special%20Economic%20Zones%20And%20The%20Economic%20Transition%20In%20China&f=false](https://books.google.it/books?hl=it&lr=&id=cnbVCgAAQBAJ&oi=fnd&pg=PR5&dq=Special+Economic+Zone+s+And+The+Economic+Transition+In+China&ots=JKU-nZoOKV&sig=CdpSJ7PKtm_8-ACvCd4Xvef8zYo#v=onepage&q=Special%20Economic%20Zones%20And%20The%20Economic%20Transition%20In%20China&f=false)

incomplete one. Left out of the picture are inequities in development, arable land loss, real estate speculation and labor violence<sup>2</sup>.

In 2013, the Chinese government launched a new generation of Special Economic Zones whose pilot project was the Shanghai Free Trade Zones (SHFTZ).

The objective of this dissertation is to analyze some of the most innovative policies introduced by this new generation of Free Trade Zones to establish if FTZs can be considered a valid tool to promote institutional innovation in China and once again lead the new wave of change that the country is facing.

In order to achieve this objective, it is important to first provide some general information regarding Special Economic Zones, their definition, their history and how and why they were first introduced in China.

### **1.1.2 Definitions and Types of Special Economic Zones**

First of all, it is important to state clearly which is the main objective of SEZs, their *raison d'être*.

SEZs are created to generate or participate in the economic transformation of their host countries in a way that is faster or more effective than would be the case without them. They are developed to act as catalysts for growth.

As reported by the World Bank<sup>3</sup>, Special Economic Zones (SEZs) can be defined as geographically delimited areas administered by a single body, offering certain incentives to businesses which physically located within the zone.

Special Economic Zones can be divided into several categories, here is a list that includes the main types of SEZs<sup>4</sup>:

#### Free trade zones

Free trade zones are fenced-in, duty-free areas, offering warehousing, storage, and distribution facilities for trade, transshipment, and re-export operations.

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<sup>2</sup> GOPALAKRISHNAN, Shankar, "Negative Aspects of Special Economic Zones in China", Economic and Political Weekly, (May 4, 2007)

[https://www.jstor.org/stable/4419511#metadata\\_info\\_tab\\_contents](https://www.jstor.org/stable/4419511#metadata_info_tab_contents)

<sup>3</sup> "Special Economic Zones: Performance, Lessons Learned and Implications for Zone Development", The World Bank Group, (2008)

<https://documents1.worldbank.org/curated/en/343901468330977533/pdf/458690WP0Box331s0April200801PUBLIC1.pdf>

<sup>4</sup> "Special Economic Zones: Performance, Lessons Learned and Implications for Zone Development", The World Bank Group, (2008)

<https://documents1.worldbank.org/curated/en/343901468330977533/pdf/458690WP0Box331s0April200801PUBLIC1.pdf>

### Export processing zones

Export processing zones are industrial estates aimed primarily at foreign markets. Hybrid EPZs are typically sub-divided into a general zone open to all industries and a separate EPZ area reserved for export-oriented, EPZ-registered enterprises.

### Enterprise zones

Enterprise zones are intended to revitalize distressed urban or rural areas through the provision of tax incentives and financial grants.

### Freeports

Freeports typically encompass much larger areas. They accommodate all types of activities, including tourism and retail sales, permit on-site residence, and provide a broader set of incentives and benefits.

### Single factory EPZ

Single Factory EPZ schemes provide incentives to individual enterprises regardless of location; factories do not have to locate within a designated zone to receive incentives and privileges.

### Specialized zones

Specialized zones include science/technology parks, petrochemical zones, logistics parks, airport-based zones, and so on.

As explained above, Free Trade Zones, which are the main subject of this dissertation, are a subcategory of SEZs. It is possible to find several different definitions of what a Free Trade Zone is, as the concept itself constantly evolved and changed over the years.

Based on these definitions, the common characteristics of a Free Trade Zone are: <sup>5</sup>

### Above-average business infrastructure

Within a fenced industrial estate, tenants are provided with above-quality infrastructure and services – compared to the standards of the host country – such as land, office space, utilities, logistics services, business services and other facilities.

### More flexible business regulations

Customs services are streamlined and red tape is kept to a minimum, often through one-stop shopping for permits and investment applications. Labor and other business-related legislation are generally more flexible compared to the laws and regulations applied to businesses located elsewhere in the host country.

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<sup>5</sup> UNESCAP, “*General concepts: FTZ and port hinterland*”, Free Trade Zone and Port Hinterland Development, (2005)  
[https://www.unescap.org/sites/default/files/pub\\_2377\\_fulltext.pdf](https://www.unescap.org/sites/default/files/pub_2377_fulltext.pdf)

### An offshore location

The free trade zone is chosen as a location for business activities moving offshore, away from the markets where the finished products are sold in search of a low or lower cost manufacturing basis.

### Focus on export

Enterprises located within the zones produce mainly or exclusively for foreign markets, markets outside the host country.

### Attractive incentive packages

Major components of the FTZ concept are the incentive packages offered to foreign investors as, for example, unlimited duty drawbacks or exemptions from import duties on raw materials, intermediate inputs and capital goods used in the production of exported products, exemptions from the payment of sales tax on exported products as well as on all goods and services domestically purchased and used in their production

Originally, Free Trade Zones were created as testing grounds to facilitate import-export and international trade, offering duty-free import, export, and warehousing.

To a certain extent, Free Trade Zones in China still follow this original structure but have also added more features. China uses FTZs as a testing ground for new policies as their introduction in a single, tightly controlled region allows better testing and monitoring of such policies before considering nationwide adoption<sup>6</sup>.

Lastly, a very important distinction must be made between the concepts of Free Trade Area (FTA) and Free Trade Zone (FTZ).

A free trade area is a grouping of countries within which tariffs and non-tariff trade barriers between the members are generally abolished but with no common trade policy toward non-members. The North American Free Trade Area (NAFTA) and the European Free Trade Association (EFTA) are examples of free trade areas.

### **1.1.3 A brief History of Special Economic Zones and Free Trade Zones**

Many believe that the ancestor of the concept of a Free Trade Area is that of a Free Trade Port. As professor Jayawardena reports<sup>7</sup>, the oldest known free port established expressly to promote trade was the Roman free port on the Aegean Island of Delos, which acted as a customs-free

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<sup>6</sup> “WFOE vs WFOE in Free Trade Zones (FTZ)”, FDI China, (July 12, 2021)

<https://www.fdicchina.com/blog/wfoe-china-free-trade-zones-ftz/>

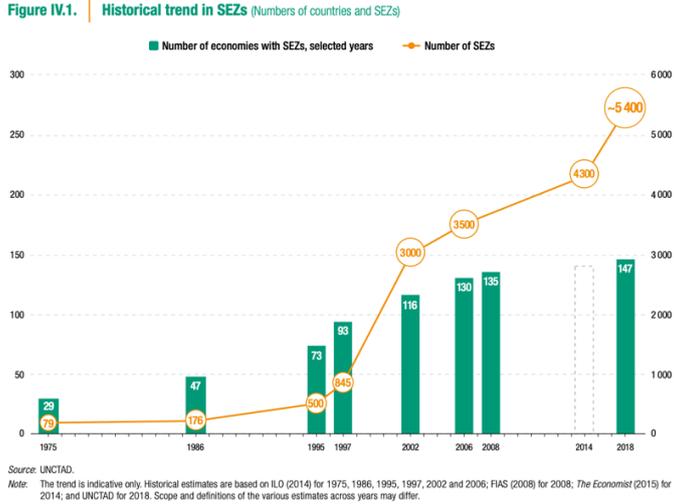
<sup>7</sup> JAYAWARDENA, D.L.U., “Free Trade Zones”, Journal of World Trade Law (1984)

center promoting trade between Egypt, Greece, Syria, North Africa, Asia and Rome. Then followed Genoa, Venice and Gibraltar. The true forerunner of the free trade zone was the free port of Hamburg, established in 1888. It was granted the special privilege of manufacturing, on the condition that it would not compete with the hinterland industry and would stay export-oriented.

A key moment in the history of SEZs is the foundation of the Shannon Free Zone in 1959. As Baissac reports<sup>8</sup>, The Shannon approach was original because it combined the attributes of the FTZ with those of the industrial park into a single, integrated investment, industry, and trade development instrument. Shannon came to represent the quintessential export processing zone, providing the template for many similar developments around the world in the ensuing decades. The result was the creation of an industrial enclave that exchanged capital, commodities, and labor flows with the surrounding economy.

The concept of SEZs developed in the 1970s and flourished in the 1980s. During the following decades, SEZs were implemented all over the world by many developing countries, in an attempt to catch up with more advanced economies and open up their markets to international trade.

The following graph summarizes the evolution of SEZs from 1975 up to 2018 and provides a clear picture of the expansion of SEZs all around the world in the last decades.



<https://kluwerlawonline.com/journalarticle/Journal+of+World+Trade/17.5/TRAD1983052>

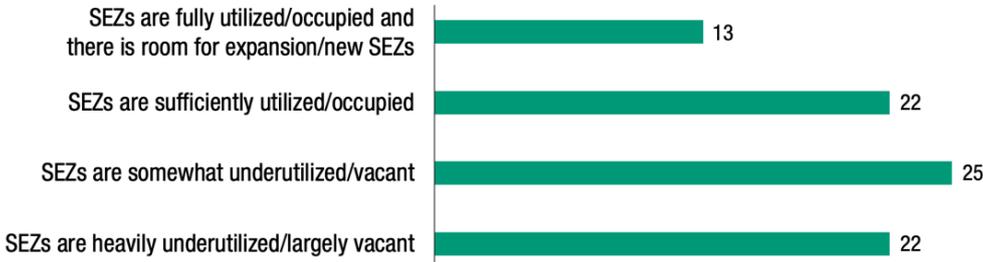
<sup>8</sup> VAISSAC, Claude, “*Brief History of SEZs and Overview of Policy debates*”, Special economic Zones in Africa, (February 2011)

[https://www.researchgate.net/publication/301090540\\_Brief\\_History\\_of\\_SEZs\\_and\\_Overview\\_of\\_Policy\\_Debates](https://www.researchgate.net/publication/301090540_Brief_History_of_SEZs_and_Overview_of_Policy_Debates)

<sup>9</sup> “*World Investment Report 2019 – Chapter 4: Special economic Zones*”, UNCTAD, (2019)

Although SEZs in China have been very successful, the results have not been as encouraging in all the countries where they have been implemented. This difference in outcomes underlines how SEZs are a very delicate tool, whose management is very complex. There are many cases of SEZs that, once established by law, remained underdeveloped and underutilized.

**Figure IV.2.** Level of utilization of SEZs according to national investment promotion agencies (Percentage of survey respondents)



Source: UNCTAD Investment Promotion Agencies Survey.

Note: The survey was conducted from February to April 2019. Results are based on information from 114 respondents.

In conclusion, SEZs have been used in the last decades to promote economic growth in developing countries; the number of SEZs is constantly raising and many governments were able to exploit this tool to bring innovation and development into their countries.

SEZs also present several downsides and raised concerns regarding labour conditions, environmental impacts and raising inequality in the territories in which they were implemented. Some scholars even questioned the legitimacy itself of such zones as they create a sort of “alternative legislation”; the “rules of the game” are arbitrarily changed, to benefit certain areas of the country instead of others.

[https://unctad.org/system/files/official-document/WIR2019\\_CH4.pdf](https://unctad.org/system/files/official-document/WIR2019_CH4.pdf)

<sup>10</sup> “World Investment Report 2019 – Chapter 4: Special economic Zones”, UNCTAD, (2019)

[https://unctad.org/system/files/official-document/WIR2019\\_CH4.pdf](https://unctad.org/system/files/official-document/WIR2019_CH4.pdf)

## 1.2 The Implementation of SEZs in the PRC

### 1.2.1 Historical and Economic Context: Deng Xiaoping's Era

Deng Xiaoping officially became China's leader in December 1978 at the 3rd Plenary Session of the 11th Central Committee, barely two years into the post-Mao era.

China's economic reality was extremely complex and the impact of the Cultural Revolution (1966-1976) was still very much present in the structure of Chinese society.

As Delisle and Goldstein explain<sup>11</sup>, the rural economy was based on collectivized farming, with mandatory sales of agricultural output to state procurement agencies. Urban industry and commerce were largely state-owned and subject to state economic planning. China's per capita GDP was around \$200 (in current U.S. dollar terms as measured by the World Bank), ranking it among the poorest countries in Asia and around the tenth percentile globally. China's foreign economic policy was one of near autarky. Exports were seen as merely a way to acquire foreign currency necessary to pay for imports, and trade was conducted through a handful of state monopoly companies. International trade was less than 10% of China's GDP, and foreign investment was negligible.

In a few years, Deng Xiaoping would completely change the reality of the country by introducing the revolutionary concept of "socialism with Chinese characteristics" (中国特色社会主义-Zhōngguó tè sè shè huì zhǔ yì). The main feature of this new approach was the peculiar combination of public ownership and market economy, which at first might seem like a contradiction but that, in Deng's view, made perfect sense.

The following passages are taken from a talk between president Deng and Frank B. Gibney, Vice-Chairman of the Compilation Committee of Encyclopaedia Britannica in November of 1979<sup>12</sup>:

Modernization does represent a great new revolution. The aim of our revolution is to liberate and expand the productive forces. Without expanding the productive forces, making our country prosperous and powerful, and improving the living standards of the people, our revolution is just empty talk. We oppose the old society and the old system because they oppressed the people and fettered the productive forces. We are clear about this problem now. The Gang of Four said it was better to be poor under

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<sup>11</sup> DELISLE, Jacques, GOLDSTEIN, Avery, *"China's Economic Reform and Opening at Forty- Past Accomplishments and Emerging Challenges"*, *To Get Rich is Glorious: Challenges Facing China's Economic Reform and Opening at Forty*, (2019)

[https://www.brookings.edu/wp-content/uploads/2019/04/9780815737254\\_ch1.pdf](https://www.brookings.edu/wp-content/uploads/2019/04/9780815737254_ch1.pdf)

<sup>12</sup> DENG, Xiaoping, "We Can Develop a Market Economy Under Socialism", (Excerpt from a talk with Frank B. Gibney, Paul T. K. Lin and others), *Deng Xiaoping Works*, (November 26, 1979)

<https://www.marxists.org/reference/archive/deng-xiaoping/1979/152.htm>

socialism than to be rich under capitalism. This is absurd. Of course, we do not want capitalism, but neither do we want to be poor under socialism. What we want is socialism in which the productive forces are developed and the country is prosperous and powerful. We believe that socialism is superior to capitalism.

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It is wrong to maintain that a market economy exists only in a capitalist society and that there is only a "capitalist" market economy. Why can't we develop a market economy under socialism? Developing a market economy does not mean practising capitalism. While maintaining a planned economy as the mainstay of our economic system, we are also introducing a market economy. But it is a socialist market economy. Although a socialist market economy is similar to a capitalist one in method, there are also differences between them. The socialist market economy mainly regulates interrelations between state-owned enterprises, between collectively owned enterprises and even between foreign capitalist enterprises. But in the final analysis, this is all done under socialism in a socialist society. We cannot say that market economy exists only under capitalism. Market economy was in its embryonic stages as early as feudal society. We can surely develop it under socialism. Similarly, taking advantage of the useful aspects of capitalist countries, including their methods of operation and management, does not mean that we will adopt capitalism. Instead, we use those methods in order to develop the productive forces under socialism. As long as learning from capitalism is regarded as no more than a means to an end, it will not change the structure of socialism or bring China back to capitalism.

Through this new political vision for China, Deng Xiaoping introduced the term “socialist market economy” (社会主义市场经济-Shèhuì zhǔyì shìchǎng jīngjì); this term defined the combination of socialism and market economy which shaped and still shapes China’s economic policies.

The strategy adopted was that of a gradual transition that would allow for experimentation with market forces, slowly but decisively departing from Mao’s policies<sup>13</sup>; this concept is well embodied by a quote that is generally attributed to Deng Xiaoping himself:

摸着石头过河- Mōzhe shitouguò hé  
The “Cross the river by feeling the stones”

This decisive shift in approach is represented by Deng’s Reform and Opening Up Policy (改革开放-Gǎigé kāifàng) which marked the beginning of radical economic and legal reforms.

The reforms were mainly carried out in two phases. In the first phase (late 1970s- early 1980s), the main objectives were the de-collectivization of agriculture, the opening up to FDI and the

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<sup>13</sup> NAUGHTON, Barry, “*The Chinese Economy: Transitions and Growth*”, The MIT Press, (2007)  
<http://proz-x.com/onlinelibrary/files/original/c7c955f8858b402e55a2f452e58fb270.pdf>

permission for privates to open businesses. The second phase of reform (late 1980s-1990s) mainly dealt with the privatization of many SOEs.

The entry of China into the WTO in 2001 was a fundamental passage, both symbolically and practically. Symbolically, it officially marks the opening up of China to the world economy while practically, the private sector grew remarkably, accounting for as much as 70% of China's GDP by 2005.

As Naughton points out<sup>14</sup>, *stability* was and still is a key concern for PRC leaders as, while change is desirable, it must be gradual without triggering fractures in society. Instead of radically implementing a modern market economy, the transformation was gradual and closely guided by the central government.

It is in this context that China first experimented with SEZs; market-oriented policies, such as the privatization of land-use rights, the commercialization of housing and diversification of ownership were all tested in SEZs. This allowed such reforms to be introduced within the framework of a still highly centralized economic system and thus leading to a coexistence of the old system and the reform policies<sup>15</sup>.

### 1.2.2 The Introduction of the First SEZs in China

The first SEZs were introduced in the southeastern coastal part of China in 1981 as part of Deng Xiaoping's Reform and Opening Up Policy (改革开放- Gǎigé kāifàng).

The "Resolution of Standing Committee of the National People's Congress Authorizing the People's Congresses of Guangdong and Fujian Provinces and Their Standing Committees to Formulate Separate Economic Regulations for their Respective Economic Zones"<sup>16</sup> was released in November 1981 and is commonly known as the "Empowerment Act of 1981". The Empowerment Act is only constituted by the enabling clause, which states that:

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<sup>14</sup> NAUGHTON, Barry, *The Chinese Economy: Transitions and Growth*, The MIT Press, (2007)  
<http://proz-x.com/onlinelibrary/files/original/c7c955f8858b402e55a2f452e58fb270.pdf>

<sup>15</sup> NAUGHTON, Barry, *The Chinese Economy: Transitions and Growth*, The MIT Press, (2007)  
<http://proz-x.com/onlinelibrary/files/original/c7c955f8858b402e55a2f452e58fb270.pdf>

<sup>16</sup> Quánguó rénmin dàibiào dàihuì chángwù wěiyuánhùi guānyú shòuquán guǎngdōng shěng, fújiàn xīng rénmin dàibiào dàihuì jí qí chángwù wěiyuánhùi zhìdìng suǒshǔ jīngjì tèqū de gè xiàng dānxíng jīngjì fǎguī de juéyì, 全国人民代表大会常务委 员会关于授权广东省、福建省人民代表大会及其常务委员会制定所属经济特区的各项单行 经济法规的决议, Resolution of Standing Committee of the National People's Congress Authorizing the People's Congresses of Guangdong and Fujian Provinces and Their Standing Committees to Formulate Separate Economic Regulations for their Respective Economic Zones, (November 26, 1981)  
<http://lawinfochina.com/display.aspx?id=30&lib=law>

第五届全国人民代表大会常务委员会第二十一次会议审议了国务院关于建议授权广东省、福建省人民代表大会及其常务委员会制定所属经济特区的各项单行经济法规的议案，会议认为，为了使广东省、福建省所属经济特区的建设顺利进行，使特区的经济管理充分适应工作需要，更加有效地发挥经济特区的作用，决定：授权广东省、福建省人民代表大会及其常务委员会，根据有关的法律、法令、政策规定的原则，按照各该省经济特区的具体情况和实际需要，制定经济特区的各项单行经济法规，并报全国人民代表大会常务委员会和国务院备案。

Having considered the proposal submitted by the State Council for authorizing the people's congresses of Guangdong and Fujian Provinces and their standing committees to formulate separate economic regulations for the special economic zones in these two provinces and with a view to ensuring the smooth progress of construction in the special economic zones in the two provinces, fully adjusting economic management in the special economic zones to the needs in the work there, and giving a more effective role to the special economic zones, the 21st Meeting of the Standing Committee of the Fifth National People's Congress resolves that, the people's congresses of Guangdong and Fujian provinces and their standing committees shall be authorized to formulate separate economic regulations for the special economic zones in accordance with the principles provided in relevant laws, decrees and policies and in the light of the specific conditions and actual needs in the special economic zones in those provinces, and they shall submit these regulations to the Standing Committee of the National People's Congress and the State Council for the record.

The empowerment decision of 1981 is still in force and, according to the Legislation Law 2000 as well as its revision from 2015, the people's congresses and their standing committees of a province where an SEZ is located have the right—based on the empowerment decision of 1981—to enact regulations for implementation within their SEZ<sup>17</sup>.

The cities chosen to implement this new policy were Shenzhen, Zhuhai and Shantou in the Guangdong province and Xiamen in the Fujian province. At the time, these four cities were just small towns (for Chinese standards) selected for the implementation of a new model that would experiment with the progressive opening-up of China and its transformation into the economic power that it is today. In just a few years they transformed into huge and modern cities that had nothing less to offer than Shanghai or Beijing.

It has been proved that the geographical location of SEZs is fundamental; a strategic location is a fundamental factor in determining the success of a SEZ while, on the other side, a mistake in choosing the correct location could ultimately determine the failure of the project<sup>18</sup>. There are different reasons why the central government specifically chose these two regions (and mainly Guangdong) as testing grounds for the implementation of SEZs.

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<sup>17</sup> MARTINEK, Madeleine, *“Experimental Legislation in China Between Efficiency and Legality”*, Springer, (2018), <https://link.springer.com/book/10.1007/978-3-319-77616-3>

<sup>18</sup> RUBINI Laretta, DI TOMMASO, Marco R., BARBIERI, Elisa, *“Special Economic Zones and Cluster Dynamics:China”*, International Encyclopedia of the Social & Behavioral Sciences, (2015) [https://www.researchgate.net/publication/274231455\\_Special\\_Economic\\_Zones\\_and\\_Cluster\\_Dynamics\\_China](https://www.researchgate.net/publication/274231455_Special_Economic_Zones_and_Cluster_Dynamics_China)

First of all, there was an initial interest from local governments to experiment with this tool; they were convinced that SEZs would contribute greatly to the economic progress of their local economies and eventually strengthen the whole country.<sup>19</sup> In 1980, the People's Congress of Guangdong Province issued the "Regulations on Special Economic Zones in Guangdong Province"<sup>20</sup>, commonly known as the "Guangdong Regulations", which were then approved by the 15th Session of the Standing Committee of the Fifth National People's Congress. The Guangdong Regulations constitute China's first legislation on SEZs and legitimize the establishment of the first three SEZs.

A second reason why the Chinese government chose these territories as testing grounds was their proximity to the territories of Hong Kong, Macau<sup>21</sup> and Taiwan. These territories were already extremely developed and part of the competitive international market, they therefore represented an important source not only of potential FDI (incentivized by cultural proximity) but also a fundamental source of learning. The central government also had the intention of using the SEZs as intermediary zones for the reunification with these territories and recognized that the overseas Chinese community was a force to reckon with in raising productive capital<sup>22</sup>. Lastly, one of the reasons why Guangdong and Fujian were chosen is their ultimate expandability. Because of their low level of economic development, a possible failure of the new policy would not have affected the whole country too much.

Shenzhen is notably the most famous example of the astonishing transformation that the territories in which SEZs were first implemented underwent. In just a few decades, what was a fishing village of 300.000 people, became a modern metropolis that nowadays hosts high-tech industries and is home to more than 20 million people.

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<sup>19</sup> MARTINEK, Madeleine, *Experimental Legislation in China between Efficiency and Legality*, Springer, (2018), <https://link.springer.com/book/10.1007/978-3-319-77616-3>

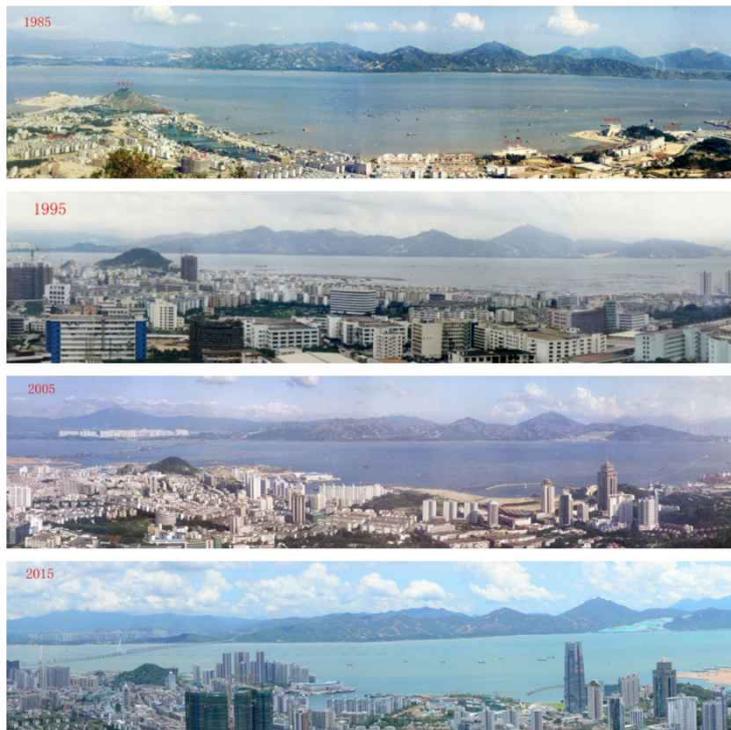
<sup>20</sup> "Regulations on Special Economic Zones in Guangdong Province" (Approved for implementation on August 26, 1980)

[https://www.wto.org/english/thewto\\_e/acc\\_e/chn\\_e/wtacchn46\\_leg\\_8.pdf](https://www.wto.org/english/thewto_e/acc_e/chn_e/wtacchn46_leg_8.pdf)

<sup>21</sup> It is to be noted that at the time Hong Kong and Macau were not under the direct control of the PRC. Hong Kong was officially handed over to the PRC in 1997, while Macau in 1999. Today, the two territories possess a specific status, that of "Special Administrative Regions" (SARs).

<sup>22</sup> WU, Weipeng, *Proximity and Complementarity in Hong Kong-Shenzhen Industrialization*, University of California Press, (August 1997)

[https://www.jstor.org/stable/pdf/2645449.pdf?refreqid=excelsior%3Aace0cd2fe73a5f302a248dddb4b8eb48&ab\\_segments=&origin=&acceptTC=1](https://www.jstor.org/stable/pdf/2645449.pdf?refreqid=excelsior%3Aace0cd2fe73a5f302a248dddb4b8eb48&ab_segments=&origin=&acceptTC=1)



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Because of the success of the first SEZs, the SEZ status was granted to more and more areas in the following years. The following map graphically shows the astonishing expansion of SEZs from their first establishment in 1980 up until 2006.

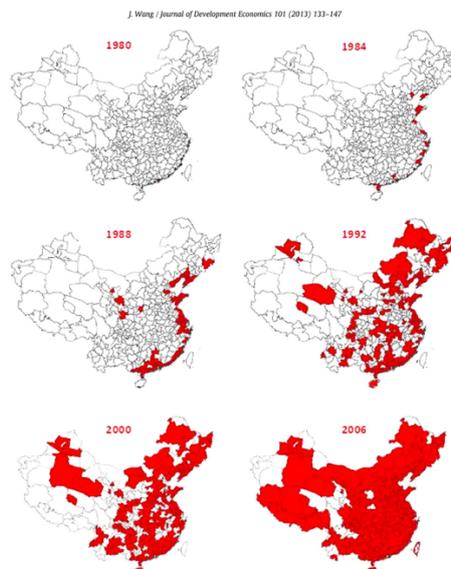


Fig. 2. The geographic evolution of the Special Economic Zone experiment. Note: if the whole municipality was granted the status of open economic area, or within the municipality, only a certain geographical area was allowed to establish state-level economic zones, or province-level economic zones, the municipality was entitled to use preferential policies (including property rights protection, tax breaks, cheaper land bills, etc.) to attract foreign direct investment. Therefore, I define the municipality to be a Special Economic Zone (SEZ) from a general perspective.

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<sup>23</sup> Photographies taken by Chen Zonghao

Available at: [https://news.cgtn.com/news/3d3d414d306b6a4d31457a6333566d54/share\\_p.html](https://news.cgtn.com/news/3d3d414d306b6a4d31457a6333566d54/share_p.html)

<sup>24</sup> WANG, Jin, "The economic impact of Special Economic Zones: Evidence from

### 1.2.3 SEZs in the PRC: a Successful Experiment

Even though SEZs are not perfect tools, it is undeniable that China was extremely successful in their implementation. One of the main aspects that determined this success is the initial definition of clear objectives that the Chinese Government wanted to reach through their introduction; these objectives went far beyond the simple attraction of FDI and included an ambitious plan to modernize the country in various areas.

Among the various objectives set by the government for SEZs, it is important to underline<sup>25</sup>:

- To study capitalism and its mechanisms;
- To test innovative policies in different fields;
- To acquire capital, modern technologies, and management methods;
- To incentivize exports;
- To create local job opportunities;
- To generate foreign exchange to finance China's import needs;
- To promote competition among regions;
- To facilitate the future return process of Hong Kong, Macao and Taiwan to China

It is therefore clear how China did not make the same mistake already made by several developing countries when adopting SEZ. From the very beginning, the Chinese government used these zones to incentivize innovation in several fields and reach clear objectives that would help China in its process of reform and opening-up.

Another element that determined the ultimate success of SEZ in China is their “specialization”. It has been studied that the more specialized a SEZ is, the more likely it is to be successful; this is because, besides the specific privileges granted by the SEZ establishment, there is also an incremental effect due to the exploitation of the cluster economies<sup>26</sup>. When talking about the new generation of FTZs (the main topic of chapter 2), specialization is almost included in the implementation plan of each single FTZ while in these first cases of SEZs, specialization almost naturally became a feature of SEZs. Shenzhen is a good example of this process; as explained by Rubini, Di Tommaso and Barbieri<sup>27</sup>, the concentration in the city of firms operating in the

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*Chinese municipalities*”, Journal of Development Economics, (2012)  
<https://doi.org/10.1016/j.jdeveco.2012.10.009>

<sup>25</sup> OTA, Tatsuyuki, “*The Role of Special Economic Zones in China's Economic Development As Compared with Asian Export Processing Zones : 1979 – 1995*”, Asia in Extensio, (January 2003)  
[https://www.researchgate.net/publication/238694334\\_The\\_Role\\_of\\_Special\\_Economic\\_Zones\\_in\\_China's\\_Economic\\_Development\\_As\\_Compared\\_with\\_Asian\\_Export\\_Processing\\_Zones\\_1979\\_-\\_1995](https://www.researchgate.net/publication/238694334_The_Role_of_Special_Economic_Zones_in_China's_Economic_Development_As_Compared_with_Asian_Export_Processing_Zones_1979_-_1995)

<sup>26</sup> RUBINI Lauretta, DI TOMMASO, Marco R., BARBIERI, Elisa, “*Special Economic Zones and Cluster Dynamics:China*”, International Encyclopedia of the Social & Behavioral Sciences, (2015)

[https://www.researchgate.net/publication/274231455\\_Special\\_Economic\\_Zones\\_and\\_Cluster\\_Dynamics\\_China](https://www.researchgate.net/publication/274231455_Special_Economic_Zones_and_Cluster_Dynamics_China)  
<sup>27</sup> RUBINI Lauretta, DI TOMMASO, Marco R., BARBIERI, Elisa, “*Special Economic Zones and Cluster Dynamics:China*”, International Encyclopedia of the Social & Behavioral Sciences, (2015)

electronic sector, favored by the special privileges granted by SEZ status, has undoubtedly facilitated the flourishing of common services, the attraction of specialized workforce, and other sector-specific advantages that have multiplied the effects of the SEZ establishment per se. This setting has then reasonably encouraged joint actions and collaborations among a variety of relevant and specific actors, offering to the new clustered local economy unique competitive advantages.

SEZs also promoted a successful process of growth-enhancing structural change in China. This is fundamental as economic development can ultimately be considered a process of structural change. SEZs helped in the process of moving labor from low to high value-added industries and from rural areas to urban areas.

Lastly, one of the main factors that determine the ultimate success or failure of a SEZ is the degree to which such a zone was able to reach the initial objectives set by the government that created it.

As explained above, Chinese SEZs' main role was that of supporting the gradual opening up of the economy and experimenting with new policies while, at the same time, allowing the central government to still control the pace of such change and manage the downsides of trade liberalization. In this regard, it is possible to affirm that SEZs in China completely reached their initial goal.

### **1.3 Zooming in: Definitions and Types of Special Economic Zones in the PRC**

#### **1.3.1 The Different Meaning of Special Economic Zone in China**

To better understand how SEZs and FTZs actually work in China, it is important to go deeper into the analysis of what is a Special Economic Zone in the Chinese government's eyes and adapt its definition to the context in which it was implemented.

What is immediately clear by analyzing Chinese papers and official documents is the peculiar use of the term SEZ; the term is not used as an "umbrella" term to cover different types of SEZ (e.g. FTZ, EPZ etc.), as per the definition provided by the World Bank (1.1.2), but is used in a very specific way to identify the SEZ created in the areas of Shenzhen, Zhuhai, Shantou in Guangdong, Xiamen in Fujian and the region of Hainan.

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[https://www.researchgate.net/publication/274231455\\_Special\\_Economic\\_Zones\\_and\\_Cluster\\_Dynamics\\_China](https://www.researchgate.net/publication/274231455_Special_Economic_Zones_and_Cluster_Dynamics_China)

In the following paragraphs a deeper analysis of the different types of SEZs<sup>28</sup> present on the Chinese territory is provided; to better understand how they are different from the definitions provided by Western institutions, a particular focus on Chinese terms and definitions is adopted.

### 1.3.2 特区 Special Areas and 经济特区 Special Economic Zones

The first occurrence of the term 特区 (tèqū) “Special Area/Region/Zone” dates back to the creation of the principle of 一国两制 (Yīguóliǎngzhì) “One country, two systems”. The constitutional concept of “One country, Two Systems” was created in the 80s during the negotiation between China and the UK over the possible reunification of the territory of Hong Kong to Mainland China<sup>29</sup>. The principle of “One country, two systems” is based on the concept that while there would only be one, unified China, the regions of Hong Kong and then Macau could retain their own economic and administrative systems, while the rest of Mainland China would follow the principles of 中国特色社会主义 (Zhōngguó tè sè shèhuìzhǔyì) “Socialism with Chinese Characteristics”.

As Wong reports<sup>30</sup>, the ‘One Country, Two Systems’ policy had the following characteristics:

- Hong Kong would keep its capitalist economic system with a separation from China’s communist system; thus, the policy was called “One Country, Two Systems.”
- Hong Kong would have a high degree of autonomy in running its economic, political and cultural affairs and maintain its own police and armed forces, currency, its “capitalist social habits” and institutions, including its own laws and courts. Mainland laws and regulations would not be applied in Hong Kong. Beijing and local governments on the mainland would not interfere in Hong Kong affairs except those concerning foreign affairs. Hong Kong people would rule Hong Kong. The government of Hong Kong would be elected by Hong Kong people, and Beijing would not send any officials to run the Hong Kong government.
- The “One Country, Two Systems” would be unchanged for a period of 50 years after 1997<sup>31</sup>

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<sup>28</sup> As per WB definition.

<sup>29</sup> The reunification of the territory of Hong Kong to Mainland China then took place in 1997.

▪ <sup>30</sup> So, Alvin, “One Country, Two Systems and Hong Kong-China National Integration: A Crisis-Transformation Perspective”, *Journal of Contemporary Asia* (Volume 41), (February 2021)

DOI: [10.1080/00472336.2011.530039](https://doi.org/10.1080/00472336.2011.530039)

<sup>31</sup> Recent developments have cast doubts on this point (see National Security Law 2020).

The “One Country, Two systems” model was then extended to the region of Macau<sup>32</sup> as well and the two regions became Special Administrative Regions (SARs) or, in Chinese, 行政特区 (Xíngzhèng tèqū).

行政特区 are therefore the first example of areas/regions within China that were authorized to function under different rules than those applied in the rest of the Chinese territory.

Following the same principle, when the Chinese Government decided to establish the first SEZs in China, they named them 经济特区 (Jīngjì tèqū), whose literal translation is that of “Special Economic Zone”.

特区 (tèqū) therefore is a special area or region within a territory that follows different rules. The peculiarity of such zone is usually specified in the term that precedes “特区”; in the case of SARs what makes them special is their 行政 “administrative” status, while in the case of SEZs it is their 经济 “economic” status.

As mentioned above, the Chinese meaning of the term 经济特区 is not completely comparable to its English version as it comes to define a specific type of area, with very specific characteristics and not an “umbrella term” to define all different kinds of SEZ (e.g. FTZ, EPZ etc.) as in its English meaning.

To solve this problem of definitions that could create some confusion, many Chinese scholars refer to Chinese SEZs with the term 中国特色社会主义特区 (Zhōngguó tèshè jīngjì tèqū) “Special Economic Zones with Chinese Characteristics” and to the international/Western conception of SEZ with the broader term 世界经济特区 (Shìjiè jīngjì tèqū) “Foreign Special Economic Zones”<sup>33</sup>.

In this paragraph, the term 经济特区 will be used as a synonym of 中国特色社会主义特区 as they are the main topic of this section.

As already explained in previous paragraphs (1.2.2 / 1.2.3), 经济特区 were first implemented in China in the early 80s of the 20<sup>th</sup> century during the era of reform and opening up of Deng Xiaoping. The first 经济特区 were created in the cities of Shenzhen, Shantou and Zhuhai in Guangdong and Xiamen in Fujian. The experiment was so successful that in 1988 the Central Government of the PRC approved the creation of a new 经济特区 that comprised the whole

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<sup>32</sup> The reunification of the territory of Macau to Mainland China then took place in 1999.

<sup>33</sup> The literal translation of the term would be “Special Economic Zones of the World” and may sound quite confusing and unclear; the main idea is that of differentiating the Chinese Special Economic Zones from the more traditional ones implemented in other countries and that make reference to the definition of SEZ provided by the WB.

region of Hainan and in 1992 Shanghai's Pudong New Area was approved as another 经济特区. Lastly, in 2010 the city of Kashgar (Xinjiang) was the last SEZ to be added to the list. This last step is quite significant as it is an important step in fighting the inequality of income and development between the coastal and inner areas of the country.

Liu and Fang<sup>34</sup> summarize the evolution of SEZs in China in the following passage:

#### 中国特色经济特区的演进

中国经济特区经历了 40 多年的建设与发展, 呈现出明显的阶段性特征, 主要划分为以下五个阶段:

一是决策和试建阶段 (1979—1980 年)。这段时期, 对于经济特区的选址、范围、条例和规划等进行了充足准备, 但在深圳、珠海、汕头和厦门四地的具体试建中仍阻力重重, 除了要克服资金不足、缺乏经验等直接困难, 还面临旧体制、旧观念的思想阻力。

二是初步建设阶段 (1980—1985 年)。在第二阶段中, 经济特区加快“五通一平”基础工程建设, 依据经济规律办事, 发展外向型工业, 并重视解决政策红利与法规、管理的脱钩问题。

三是提速发展阶段 (1986—2000 年)。这一阶段, 经济特区建设回归企业属性, 大力发展技术密集型和资金密集型企业。在此期间, 海南经济特区、上海浦东国家级新区的建立发展, 成为中国新一轮改革开放的重要标志。

四是腾飞与推广阶段 (2001—2018 年)。这段时期, 为解决区域不平衡发展问题, 霍尔果斯、喀什设立经济特区。此外, 中国自由贸易试验区的相继设立, 进一步提升了贸易自由化与便利化。

#### Evolution of Special Economic Zones with Chinese Characteristics

China's special economic zones have experienced more than 40 years of construction and development, showing obvious characteristics and can mainly be divided into the following four stages:

First, the decision-making and trial construction stage (1979-1980). During this period, adequate preparations were made for the location, scope, regulations and planning of special economic zones but there were still many obstacles in their specific trial construction in Shenzhen, Zhuhai, Shantou and Xiamen; in addition to this it was necessary to overcome the lack of funds and lack of experience (in setting up such zones), face the immediate difficulties and the mindset of the old system and old ideas.

The second stage was the initial construction stage (1980-1985). During this second stage, the special economic zones accelerated the construction of the "five connections and one leveling"<sup>35</sup>, acted according to economic laws, developed export-oriented industries, and paid attention to solving the problem of decoupling policy dividends from regulations and management.

<sup>34</sup> LIU, Weili, FANG, Xiaomeng, Shìjiè jīngjì tèqū yǎnjìn yǔ zhōngguó tèsè jīngjì tèqū fāzhǎn lùjìng xuǎnzé, 世界经济特区演进与中国特色经济特区发展路径选择, The Evolution of World Special Economic Zones and the Choice of Development Path of Special Economic Zones with Chinese Characteristics, Intertrade 2022 (国际贸易 2022)

[https://oversea.cnki.net/KCMS/detail/detail.aspx?dbcode=CJFD&dbname=CJFDAUTO&filename=GJMY202207005&uniplatform=OVERSEA&v=2cmg8Z3p\\_qJuws3IPzE29rHBnErMxRLoh4y0uHilWJrJ0cWzu7Jy57liqP6cvUS0](https://oversea.cnki.net/KCMS/detail/detail.aspx?dbcode=CJFD&dbname=CJFDAUTO&filename=GJMY202207005&uniplatform=OVERSEA&v=2cmg8Z3p_qJuws3IPzE29rHBnErMxRLoh4y0uHilWJrJ0cWzu7Jy57liqP6cvUS0)

<sup>35</sup> The term “五通一平” refers to the necessary preliminary work to provide water supply, electricity, road access, communication, drainage, land leveling in the areas in which the first SEZ were built.

The third is the stage of accelerated development (1986-2000). At this stage, the construction of special economic zones returned to focus on the attributes of the enterprises and vigorously developed technology-intensive and capital-intensive enterprises. During this period, the establishment and development of the Hainan Special Economic Zone and Shanghai Pudong National New Area became important symbols of China's new round of reform and opening up.

The fourth stage was the take-off and promotion stage (2001-2018). During this period, in order to solve the problem of regional unbalanced development, Khorgos and Kashgar established special economic zones. In addition, the successive establishment of China's pilot free trade zones has further enhanced trade liberalization and facilitation.

### 1.3.3 沿海开放城市 Open Coastal Cities

The term 沿海开放城市 (Yánhǎi kāifàng chéngshì) “Coastal Open City” refers to another type of “Special Zone” created by the Chinese Government just a few years after the introduction of 经济特区 in mainland China.

“Coastal Open Cities” refer to a series of port cities in China's coastal areas that implement special policies and in which international trade is facilitated due to the special treatment granted in these territories.

In a way, Coastal Open Cities can be considered an extension of SEZs as their fundamental aim is almost identical: open-up the Chinese economy to the world. The main difference with SEZ could be that they do not have the same “experimental nature” of 经济特区, their nature and the advantages that they provide are mainly economic.

The first batch of 沿海开放城市 was approved by the State Council in 1984 and included the fourteen coastal cities of Dalian, Qinhuangdao, Tianjin, Yantai, Qingdao, Lianyungang, Nantong, Shanghai, Ningbo, Wenzhou, Fuzhou, Guangzhou, Zhanjiang and Beihai. All of these cities were opened to overseas investments. The next step occurred the following year (1985) when the State Council decided to expand the open coastal areas, extending the open economic zones of the Yangtze River Delta, Pearl River Delta, Xiamen-Zhangzhou-Quanzhou Triangle in south Fujian, Shandong Peninsula, Liaodong Peninsula, Hebei and Guangxi and created an “Open Coastal Belt”<sup>36</sup>.

Even though if it is now difficult to understand the relevance 沿海开放城市, it is important to remember that when they were first implemented, China was in the early stages of the economic reforms and opening up of the economy promoted by Deng Xiaoping; thanks to their strategic geographical position, Coastal Open Cities represented a key element in the transition of the

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<sup>36</sup> Jīngjì tèqū yǔ yánhǎi kāifàng chéngshì, 经济特区与沿海开放城市, Special Economic Zones and Coastal Open Cities, Ministry of Foreign Affairs of the People's Republic of China (中华人民共和国外交部), (2000) <https://www.mfa.gov.cn/chn/pds/ziliao/zt/ywzt/wzzt/2108/2109/2113/t8426.htm>

Chinese economy and sent an important signal to the world: China was serious in its path of reforms and was ready to open its economy (and its cities) to the world.

As reported in the 2008 article “回顾首批沿海地区 30 年外贸发展成就” (Review of the 30-Year Foreign Trade Development Achievements of the First Batch of Open Coastal Cities)<sup>37</sup>:

首批沿海开放城市曾是中国改革开放的先锋，现在是中国经济社会发展的坚实基础。改革开放 30 年来，首批沿海开放城市冲破传统体制的束缚，作为中国经济最具活力的排头兵，抢抓先发效应，综合运用国家优惠激励政策，充分挖掘发展优势，使自身发生了翻天覆地的变化，在结构调整、城乡统筹和转变经济发展方式上走在前列，实现了从东到西，从沿海到内地的信息、技术、人才、资金的战略转移，扩大对内对外的辐射作用，带动内地经济的发展，成为中国目前综合实力与竞争力最强，最有希望融入经济全球化，与发达国家差距最小的区域。20 多年来，沿海开放城市当时的一些优惠政策现在已经取消或扩展到其他区域，但作为改革开放伟大历史进程中的重要一环，沿海开放城市在中国对外开放和对外贸易发展的历史进程中发挥了重要作用。

The first batch of coastal open cities were the pioneers of China's reform and opening up and are now a solid foundation for China's economic and social development. Over the past 30 years of reform and opening up, the first batch of coastal open cities have broken through the shackles of the traditional system. As the most dynamic vanguard of China's economy, they have seized the first-mover effect, comprehensively used national preferential incentive policies, and fully exploited their development advantages, making themselves undergo earth-shaking changes; they were in the forefront of structural adjustment, urban and rural planning and transformation of economic development mode, realizing the strategic transfer of information, technology, talents, and capital from east to west, from the coast to the inner part of the country, expanding their radiation effect inside and outside, driving the inner part of the country. With its economic development, China has become the region with the strongest comprehensive strength and competitiveness, the most promising region to integrate into economic globalization, and has now only the smallest gap with developed countries. Over the past 20 years, some preferential policies previously granted to Coastal Open Cities have been cancelled or extended to other regions, but as an important part of the great historical process of reform and opening up, Coastal Open Cities have played a role in the historical process of China's opening to the outside world and foreign trade development.

In conclusion, here is a map that shows where the 14 沿海开放城市 are located.

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<sup>37</sup> QI, Xin, Huígù shǒu pī yánhǎi dìqū 30 nián wàimào fāzhǎn chéngjiù, 回顾首批沿海地区 30 年外贸发展成就, Review of the 30-Year Foreign Trade Development Achievements of the First Batch of Open Coastal Cities, China Business Update, (2008)  
<https://oversea.cnki.net/KCMS/detail/detail.aspx?dbcode=CJFD&dbname=CJFD2008&filename=JMZG200808016&uniplatform=OVERSEA&v=jJr9S551aD6mUbmY3-jmuOqlbFr4IL-CktJ9NcDvMygDqY0AflkcNm gm7sxJ44-x>



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### 1.3.4 经济技术开发区 Economic and Technological Development Zones

经济技术开发区(Jīngjì jìshù kāifā qū) “Economic and Technological Development Zones” and 高新技术开发区(gāoxīn jìshù kāifā qū) “High-Tech Development Zones” are yet another example of bounded areas within the Chinese territory that work under different rules if compared to the rest of the country.

经济技术开发区 were first introduced almost concurrently with Open Coastal Cities; in 1984 the State Council approved the creation of 经济技术开发区 inside the Open Coastal Cities of Dalian, Qinhuangdao, Tianjin, Yantai, Qiongdao, Lianyungang, Nantong, Ningbo, Fuzhou, Guangzhou and Zhanjian and in August 1986 and June 1988 the project was extended to the territories of Shanghai Minhang, Hongqiao and Caohejing. Nowadays there are 230 经济技术开发区 active in China.

The main objectives that the State Council wanted to reach through these zones were:

- The introduction of new technologies and their integration into the industrial development plan for old urban areas
- The introduction of FDI
- An increase in exports
- The assimilation of foreign management experience and know-how

<sup>38</sup> Image available at: <https://slidesplayer.com/slide/11762949/>

These objectives sound very similar to the objectives of the first generation of 经济特区 already discussed in previous paragraphs (1.2.3) but while these two types of “Special Zones” share some similarities, they are not the same thing.

In terms of management system, 经济特区 are relatively independent administrative areas while 经济技术开发区 are areas under the direct leadership and specific jurisdiction of the municipal’s people government where certain preferential policies are implemented; in practice, within 经济技术开发区 an administrative committee, usually selected by the local government, controls the economic and social management of the zone on behalf of the local administration<sup>39</sup>

In terms of economic structure, 经济特区 are export-oriented comprehensive economies that combine industry and trade while 经济技术开发区 are mainly based on the development of advanced industrial production and scientific research and the tertiary industry mainly relies in the city where the 经济技术开发区 is located. If necessary foreign trade, financial, commercial, warehousing and transportation services can be set up in the zone but that mainly to provide services for the production, operation and life of the zone.

In terms of preferential policies for foreign-invested enterprises, foreign-invested enterprises in 经济特区 are subject to a corporate income tax rate of 15% while in 经济技术开发区 only production and technological enterprises enjoy this benefit.

Lastly, in terms of tax exemption, most of the consumer goods and market materials imported by 经济特区 are exempted or reduced for customs duties while in 经济技术开发区 goods are subject to customs duties except for certain items and services such as tourism or food and beverages<sup>40</sup>.

To better understand the difference between the policies applied in these two different areas it is useful to analyze the Chinese terms with which they are described; in Economic and Technological Development Zones, 优惠政策(Yōuhuì zhèngcè) are applied while in Special Economic Zones 特殊政策 (Tèshū zhèngcè) are applied. The terms 政策 (policy) remains the same but the adjectives used to describe it change; while 优惠 simply means “preferential”,

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<sup>39</sup> RUBINI Lauretta, DI TOMMASO, Marco R., BARBIERI, Elisa, “*Special Economic Zones and Cluster Dynamics:China*”, International Encyclopedia of the Social & Behavioral Sciences, (2015)

[https://www.researchgate.net/publication/274231455\\_Special\\_Economic\\_Zones\\_and\\_Cluster\\_Dynamics\\_China](https://www.researchgate.net/publication/274231455_Special_Economic_Zones_and_Cluster_Dynamics_China)

<sup>40</sup> Yánhǎi kāifàng chéngshì de jīngjì jìshù kāifàng qū, 沿海开放城市的经济技术开放区, Economic and Technological Development Zones in Open Coastal Cities, Jiangsu government website <http://www.jiangsu.gov.cn/xxgk/project/P0201604/P020160420/P020160420547647188540.pdf>

特殊 goes beyond the simple “preferential” meaning and has a more “exceptional/particular/special” meaning.

In conclusion, the main difference between 经济特区 and 经济技术开发区 is one of extension; extension not only in geographical terms (经济技术开发区 are usually smaller than 经济特区) but also of delegated power. 经济特区 enjoy more freedom in terms of governance and have relatively independent economies.

### 1.3.5 高新技术开发区 High-Tech Development Zones

To better understand the relevance of 高新技术开发区 (Gāoxīn jìshù kāifā qū) “High-Tech Development Zones” it is first of all understand the scientific and technological panorama that characterized China in the 20<sup>th</sup> century.

#### 从新中国成立到改革开放<sup>41</sup>

新中国诞生之时，全国专门从事科学技术研究工作的只有 500 多人，专门的科学研究机构中只有 40 多个，高新技术的发展几乎是一片空白。中央政府投入很大的精力来发展科学技术尤其是高新技术。1956 年，国务院组织制定了中国第一个长期科学技术发展规划，即《1956—1967 年全国科学技术发展远景规划》，其中发展高新技术的方针是“重点发展，迎头赶上”，重点发展六个方面的新兴技术：核技术、喷气技术、无线电技术、自动化技术、计算机技术和半导体技术。从此，中国高新技术事业开始走上正常发展的道路。

1962 年，国家科委又制定了《1963—1972 年科学技术发展规划》，重点安排了 374 项科研项目，进一步推动高新技术向前发展，并取得了一系列丰硕成果。但从 1966 年开始的“文化大革命”使中国高新技术的发展裹足不前，仅在少数的几个领域有了一些突破，如 1970 年第一颗人造卫星上天，1975 年大规模集成电路研制成功等。

中国在结束了长达 10 余年的“文化大革命”后，国民经济趋于崩溃，党和国家最主要的任务就是把各项工作的重心转移到经济建设上来，尽快恢复国民经济，改善人民生活水平。1978 年 3 月，全国科学大会召开。时任副总理的邓小平同志提出科学技术是第一生产力，科技人员是工人阶级的一部分，从理论和意识形态上扫清了发展科学技术的主要障碍。邓小平还指出，“四个现代化，关键是科学技术的现代化。没有现代科学技术，就不可能建设现代农业、现代工业、现代国防。没有科学技术的高速发展，也就不可能有国民经济的高速发展”，从而明确了发展科技和发展经济的关系，指出了科学技术与经济发展相结合的方向。在这次全国科学技术大会的精神指引下，全国开始恢复正常的教育和科技活动，落实知识分子政策，推动科技和教育界的改革，促进了全国的改革开放。大会通过了《1978—1985 年全国科学技术发展规划纲要》，大大提高了科学技术在建设现代化社会主义国家中的地位和作用，标志着中国科学技术事业进入了一个新的发展阶段。

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<sup>41</sup> Gāoxīn qū fāzhǎn de lìshǐ bèijǐng hé yǎnbiàn jìnchéng, 高新区发展的历史背景和演变进程, The historical background and evolution process of the development of high-tech zones, GEI (Greatwall Strategy Consultants), (2012)  
<http://www.gei.com.cn/ycwz/4015.jhtml>

### **From the Founding of the People's Republic of China to the Era of Reform and Opening Up**

When the People's Republic of China was born, there were only more or less 500 people specializing in scientific and technological research in the country, and there were only more or less 40 specialized scientific research institutions. The development of high-tech was almost blank. The central government has devoted a lot of energy to the development of science and technology, especially high and new technology. In 1956, the State Council organized the formulation of China's first long-term scientific and technological development plan, namely the "National Long-term Plan for the Development of Science and Technology from 1956 to 1967". The plan focused on the following emerging technologies: nuclear technology, jet technology, radio technology, automation technology, computer technology and semiconductor technology. Since then, China's high-tech industry has embarked on the path of normal development.

In 1962, the State Science and Technology Commission formulated the "1963-1972 Science and Technology Development Plan", which focused on 374 scientific research projects, further promoted the development of high-tech, and achieved a series of fruitful results. However, the "Cultural Revolution" that began in 1966 stagnated the development of China's high-tech, which only made some breakthroughs in a few fields, such as the construction of first artificial satellite that was launched in 1970, and the large-scale integrated circuit that was successfully developed in 1975.

After the end of the "Cultural Revolution" that lasted for more than 10 years, the national economy almost collapsed. The most important task of the party and the country was that of shifting the focus on economic construction, restoration of the national economy as soon as possible, and improvement people's living standards. In March 1978, the National Science Conference was held. Comrade Deng Xiaoping, then vice premier, pointed out that science and technology were the primary productive forces, and scientific and technological personnel were part of the working class, which had cleared away the main obstacles to the development of science and technology theoretically and ideologically. Deng Xiaoping also pointed out that:

"The key to the four modernizations is the modernization of science and technology. Without modern science and technology, it is impossible to build modern agriculture, modern industry, and modern national defense. Without the rapid development of science and technology, it is impossible to have a high-speed national economic development" This passage clarified the relationship between the development of science and technology and the development of the economy, and pointed out the direction of combining science and technology with economic development. Under the spiritual guidance of this National Science and Technology Conference, the country began to resume normal education and scientific and technological activities, implemented the policy of intellectuals, promoted the reform of the scientific and technological and educational circles, and promoted the national reform and opening up. The conference passed the "1978-1985 National Science and Technology Development Plan Outline", which greatly improved the status and role of science and technology in building a modern socialist country, marking that China's scientific and technological undertakings have entered a new stage of development.

It is in this context of renewed enthusiasm towards scientific and technological development that 高新技术开发区 were first implemented. On March 13, 1985, the 中共中央关于科技体制改革的决定 (Zhōnggòng zhōngyāng guānyú kējì tǐzhì gǎigé de juédìng ) "Decision of the Central Committee of the Communist Party of China on the Reform of the Science and

Technology System"<sup>42</sup> was officially released; the Decision analyzed the necessity of reforming the science and technology system along with the economic system reform that was gradually being carried out. The document clearly pointed out that:

为加快新兴产业的发展，要在全国选择若干智力密集地区，采取特殊政策，逐步形成具有不同特色的新兴产业开发区

"In order to accelerate the development of emerging industries, it is necessary to select a number of intelligence-intensive areas across the country, adopt special policies, and gradually form emerging industry development zones with different characteristics."

The "Decision" is a landmark event in the history of China's science and technology development. This Decision not only directly affected the process of China's science and technology development, but also had a profound impact on the development of High-Tech Zones.

The first High-Tech development Zone was officially established in 1988 in Beijing Haidan District with the name of "Beijing High-Technology Industry Development Experimental Zone"; nowadays the area is better known as 中关村 (Zhōngguāncūn). As of the end of 2021 there were 169 高新技术开发区 active on the Chinese territory.

A very important foundation for the progression of 高新技术开发区 in China was given by the so called "Torch Program" or 火炬计划 (Huǒjù jìhuà)<sup>43</sup>. The program, approved in 1988 by the State Council, is a plan to develop hi-tech industries in the country; as the administration over the program, Torch High Technology Industry Development Center (Torch Center) was founded in October 1989, as an independent legal entity, subsidiary to the Ministry of Science and Technology (MOST).

For almost 3 decades, with the formulation and implementation of a series of policy tools and activities such as the National Hi-tech Industry Development Zones, Technology Business Incubators, Hi-tech Enterprises Certification, Technology Market Promotion, China Innovation Entrepreneur Competition, Innovation Challenge of China, and Tech-Industry Express, Torch has become a working system that made outstanding achievements in improving the environment for innovation, allocating science & technology resources, promoting

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<sup>42</sup> Zhōnggòng zhōngyāng guānyú kējì tǐzhì gǎigé de juédìng, 中共中央关于科技体制改革的决定, Decision of the Central Committee of the Communist Party of China on the Reform of the Science and Technology System <http://www.bjb.cas.cn/gzzd2016/kjhzc2016/qtjzc/201602/P020160218328853262968.pdf>

<sup>43</sup> Torch High Technology Industry Development Center Website (Ministry of Science and Technology) <http://www.chinatorch.gov.cn/english/>

technological innovation and transformation, facilitating the integration of the economy with science & technology, adjusting the industrial structure, and strengthening regional innovation abilities. As an important driver for the commercialization, industrialization and internationalization of new and high technologies, Torch has become a bright banner for the development of hi-tech industries in China.

As of dimensions, the concept of 高新技术开发区 is very similar to that of 经济技术开发区; most of them are areas or district inside big and industrial cities that offer preferential policies for industries that operate in certain high-tech industries, to promote the technological development of certain sectors, in line with the government's objectives. The main difference with 经济技术开发区 is one of focus; 高新技术开发区 focus on specific technological industries (as per Government's guidelines) while 经济技术开发区 are more industrial gathering places focused on the development of the broader industrial sector, with a special attention to regional-level development.

Industrial Parks such as that of Songshan are types of 高新技术开发区.

In the last few years (since 2008) 高新技术开发区 became more and more relevant in light of the change of the Government's economic strategy (1.5.1) and the higher importance given to the technological independence of the country.

### 1.3.6 国家级新区 State-Level New Areas

新区 (Xīnqū) "New areas/districts" are new districts built inside urban areas that are granted special economic and development support by the Central Government.

新区 can be divided into state-level, provincial-level and prefectural-level; the main topic of this paragraph will be State-Level New Areas 国家级新区 (Guójiā jí xīnqū).

Deng and Hao<sup>44</sup> provided a clear explanation of the role that State-Level New Areas play in China's development process:

新区作为城市扩张的结果，它至少有两项基本功能：一是拓展城市经济发展空间，为更多的生产要素形成集聚、分工、专业化协同等经济活动提供物理空间保障，以此保证经济发展规模的不断扩大。二是为在城市经济结构升级过程中减少政府淘汰旧产业和落后产能所形成的行政成本和市场成本提供便利，以尽量低的成本完成经济资源的结构

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<sup>44</sup> DENG, Xilong, HAO Xiaowei, Guójiā jí xīnqū de xíngchéng yǔ fāzhǎn luójí tànjiù, 国家级新区的形成与发展逻辑探究, A Logical Exploration of the Formation and Development of National New Districts: Analyses Based on Its Attributes of Market and Administration, Research on Financial and Economic Issues, (2022) [https://oversea.cnki.net/KCMS/detail/detail.aspx?dbcode=CJFD&dbname=CJFDAUTO&filename=CJWT202207003&uniplatform=OVERSEA&v=w1nYhF1Wb24I9\\_IAMmuUe6VtfBNJRKcp6wW80DNXdS1v18TMGol0rDav\\_ooFGPNk](https://oversea.cnki.net/KCMS/detail/detail.aspx?dbcode=CJFD&dbname=CJFDAUTO&filename=CJWT202207003&uniplatform=OVERSEA&v=w1nYhF1Wb24I9_IAMmuUe6VtfBNJRKcp6wW80DNXdS1v18TMGol0rDav_ooFGPNk)

性重组，实现城市经济活动的专业化分工由生产要素低集成化程度向高集成化程度的转变。当从国家级的语义维度去考察国家级新区时，新区为城市政府实现经济规模不断扩大的功能虽然依然存在，但其重要性相对于实现生产要素集成化程度变高的专业化分工的功能就几乎可以忽略不计了。因此，国家级新区的核心经济功能便是最大程度地服从国家战略安排，努力实现国家战略使命，而帮助城市政府不断扩张经济规模，带动地方经济发展，仅仅是其为努力实现国家战略使命而进行必要能力准备的前提。

As the result of urban expansion, the State-Level New Areas have at least two basic functions: one is to expand the space for urban economic development and provide physical space guarantee for more production factors to form agglomeration, division of labor, specialization and coordination and other economic activities, so as to ensure economic development. The second is to facilitate the reduction of administrative costs and market costs caused by the government's elimination of old industries and outdated production capacity in the process of urban economic structure upgrading, to complete the structural reorganization of economic resources at the lowest possible cost, and to realize the specialized division of urban economic activities. The transition from a low degree of integration of production factors to a high degree of integration.

When examining the new districts from the national level perspective, although their function to realize the continuous expansion of the economic scale of the area in which they are implemented still exists, its importance is less than the function of realizing the specialized division of labor with a higher degree of integration of production factors. Therefore, the core economic function of national-level new districts is to obey the national strategic arrangement to the greatest extent, strive to realize the national strategic mission, and help the city government to continuously expand the economic scale and drive the local economic development, which is only for the realization of the national strategic mission.

As in the case of Economic and Technological Development Zones and High-Tech Development Zones, State-Level New Areas are quite small in size as they usually constitute a district in a bigger city and, exactly as in these other two types of Special Zones, they enjoy less independence in terms of management if compared to Special Economic Zones or Free Trade Zones.

As explained by The General Office of the State Council<sup>45</sup>, the main focus of these zones should be that of giving priority to the high-quality development of the manufacturing sector and deepening of the supply-side structural reform. Alongside the upgrading and transformation of traditional industries, they should expedite the introduction of leading manufacturing enterprises and top-performing businesses in the industrial chain.

The Pudong New Area (Shanghai) was approved in 1992 and can be considered the first State-Level New Area to be implemented in the country.

Nowadays there are 19 State-Level New Areas active on the Chinese Territory

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<sup>45</sup> “*State-level new areas to thrive through reform, innovation*”, The State Council of The People's Republic of China, (2017)  
[http://english.www.gov.cn/policies/latestreleases/202001/17/content\\_WS5e21a451c6d0db64b784cb82.html](http://english.www.gov.cn/policies/latestreleases/202001/17/content_WS5e21a451c6d0db64b784cb82.html)

State-Level New Area	Chinese Name	Foundation	Jurisdiction
Pudong New Area (administrative)	浦东新区 Pǔdōng Xīnqū	11 October 1992	Shanghai
Binhai New Area (administrative)	滨海新区 Bīnhǎi Xīnqū	9 November 2009	Tianjin (Binhai)
Liangjiang New Area	两江新区 Liǎngjiāng Xīnqū	18 June 2010	Chongqing
Zhoushan Archipelago New Area	舟山群岛新区 Zhōushān Qúndǎo Xīnqū	8 July 2011	Zhoushan
Lanzhou New Area	兰州新区 Lánzhōu Xīnqū	20 August 2012	Lanzhou
Nansha New Area	南沙新区 Nánshā Xīnqū	19 September 2012	Guangzhou (Nansha)
Xixian New Area	西咸新区 Xīxián Xīnqū	6 January 2014	Xi'an & Xianyang
Gui'an New Area	贵安新区 Guīān Xīnqū	6 January 2014	Guiyang & Anshun
Xihai'an New Area (administrative)	西海岸新区 Xīhǎi'àn Xīnqū	3 June 2014	Qingdao (Huangdao)
Jinpu New Area	金普新区 Jīnpǔ Xīnqū	23 June 2014	Dalian
Tianfu New Area	天府新区 Tiānfǔ Xīnqū	2 October 2014	Chengdu & Meishan
Xiangjiang New Area	湘江新区 Xiāngjiāng Xīnqū	8 April 2015	Changsha
Jiangbei New Area	江北新区 Jiāngběi Xīnqū	2 July 2015	Nanjing

Fuzhou New Area	福州新区 Fúzhōu Xīnqū	30 August 2015	Fuzhou
Dianzhong New Area	滇中新区 Diānzhōng Xīnqū	7 September 2015	Kunming, Qujing, Chuxiong, & Yuxi
Harbin New Area	哈尔滨新区 Hārbīn Xīnqū	22 December 2015	Harbin
Changchun New Area	长春新区 Chángchūn Xīnqū	2 February 2016	Changchun
Ganjiang New Area	赣江新区 Gànjiāng Xīnqū	14 June 2016	Nanchang & Jiujiang
Xiong'an New Area	雄安新区 Xióng'ān Xīnqū	1 April 2017	Baoding

### 1.3.7 Industrial Clusters and Specialized Towns

Even though 产业集群 (Chǎnyè jíqún) Industrial Clusters are not really a type of Special Economic Zone<sup>46</sup>, they are a really peculiar example of zones within the Chinese territory that received a special treatment by the Central Government and represented a key element in the process of industrialization and development of the Chinese economy.

Industrial clusters and Specialized Towns are mainly present in the region of Guangdong where government planners thought that favoring the agglomeration of specialized firms in a few specific locations could help attain industrial development, competitiveness, innovation, and technological advancement<sup>47</sup>.

Guangdong can be considered the “manufacturing centre” of the PRC, with a particular vocation for the production of electronic devices; in recent years, Guangdong has been concentrating its efforts in shifting towards higher value-added productions, characterized by a greater technology content<sup>48</sup>.

<sup>46</sup> As per WB definition.

<sup>47</sup> RUBINI Laretta, DI TOMMASO, Marco R., BARBIERI, Elisa, “*Special Economic Zones and Cluster Dynamics: China*”, International Encyclopedia of the Social & Behavioral Sciences, (2015)

[https://www.researchgate.net/publication/274231455\\_Special\\_Economic\\_Zones\\_and\\_Cluster\\_Dynamics\\_China](https://www.researchgate.net/publication/274231455_Special_Economic_Zones_and_Cluster_Dynamics_China)

<sup>48</sup> DI TOMMASO, Marco R., RUBINI, Laretta, BARBIERI Elisa, “*Southern China: Industry, Development and Industrial Policy*”, Routledge Contemporary China Series, (2017) <https://www.routledge.com/Southern-China-Industry-Development-and-Industrial-Policy/Tommaso-Rubini-Barbieri/p/book/9781138115767>

As Rubini, Di Tommaso and Barbieri explain<sup>49</sup>, the origin of Industrial Clusters in the region dates back to the second half of the 1980s, when the Chinese government introduced the “Spark Programme” whose aim was that of raising the technological innovation capacity in several rural areas of the country, particularly by establishing investment areas known as ‘Spark Technology Investment Zones,’ where firms could utilize subsidized funds coming from government and banks. These investment zones represent the seeds from which several Guangdong Specialized Towns originated. In many cases, in fact, each area tended to specialize in a specific sector following the principle of one city, one product. Given that the town was the prevailing administrative unit among these agglomerations, they were called ‘Specialized Towns’.

This was the scenario when, in 1998, the Department of Science and Technology of the Guangdong government decided to launch the ‘one city, one product’ program to support STs. It officially acknowledges as STs those ‘townships’ with a yearly industrial output beyond RMB 2 billion, with at least 30% of their industrial output concentrated in one industry that is called the ‘specialized sector.’

As Di Tommaso reports<sup>50</sup>, each potential Specialized Town is studied by a group of government experts who eventually award the town the label ‘ST’. After this formal recognition, a number of financial and preferential policies are granted in order to further encourage agglomeration and specialization. In particular, government recognition and policy advantages are expected to increase competitiveness, innovation and market visibility.

Therefore, even though Industrial Clusters were not initially introduced by the central government and were born almost spontaneously, the recognition given to them by provincial governments and the set of incentives granted to these areas make them an important example of “Special Zones” in China.

To summarize the concept, Barbieri<sup>51</sup> explains that through this process of recognition the promotion of clusters in Guangdong became an explicit industrial policy model: a tool used by the government to address more general industrial development aims.

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<sup>49</sup> RUBINI Laretta, DI TOMMASO, Marco R., BARBIERI, Elisa, “*Special Economic Zones and Cluster Dynamics: China*”, International Encyclopedia of the Social & Behavioral Sciences, (2015) [https://www.researchgate.net/publication/274231455\\_Special\\_Economic\\_Zones\\_and\\_Cluster\\_Dynamics\\_China](https://www.researchgate.net/publication/274231455_Special_Economic_Zones_and_Cluster_Dynamics_China)

<sup>50</sup> DI TOMMASO, Marco R., RUBINI, Laretta, BARBIERI Elisa, “*Southern China: Industry, Development and Industrial Policy*”, Routledge Contemporary China Series, (2017) <https://www.routledge.com/Southern-China-Industry-Development-and-Industrial-Policy/Tommaso-Rubini-Barbieri/p/book/9781138115767>

<sup>51</sup> BARBIERI, Elisa, DI TOMMASO, Marco R., RUBINI, Laretta, “*Industrial Development Policies in Southern China: the Specialized Towns Programme*”, *Economia e Politica Industriale* (Volume 36, Issue 3), (2009) <http://digital.casalini.it/10.3280/POLI2009-003010>

Analyzing the evolution of Specialized Towns over time, it is possible to identify specific trends. In particular, in the first years, the aim was mainly to strengthen the central-eastern area of the province (the so-called Pearl River Delta area). In these last few years, however, in line with the new targets of the government, the recognition of STs seems to have tried to rebalance the territorial development of the province (with more towns acknowledged outside the Pearl River Delta) while at the same time incentivizing specific sectors (such as services or tourism).

### **1.3.8 Final remarks on the Different “Special Zones” Introduced in China**

In the previous paragraphs a general overview of the different types of Special Zones introduced in China since the early 1980s has been provided. This overview cannot be considered an exhaustive one as every type of zone should be studied in a more detailed and complete way. The aim of introducing this first classification of Special Zones in China and the basic description of their characteristics is that providing the reader with a useful tool to better understand the dynamics of development and economic growth that characterized the Chinese territory in the last 40 years as they deeply influence the characteristics of the new generation of Free Trade Zones (analyzed in Chapter 2) and are instrumental in comprehending their relevance.

One last point that should be noted when discussing different types of Special Zones in China is that of their geographical coexistence. Very often Special Zones are not isolated and many areas host more than one type of Special Zone at the same time. This is the case of many Coastal Open Cities in which Economic and Technological Development Zones were introduced; Guangzhou, for example, is an Open Coastal City but it also hosts, among others, an economic and technological development zone, an export processing zone, a high-tech development zone and a duty-free zone<sup>52</sup>.

## **1.4 Experimental Legislation and Delegated Legislation in China**

“是法律服从实际情况，还是实际情况服从法律？谁是母亲，谁是儿子？实际产生法律，实际是母亲，法律、法理是儿子。”

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<sup>52</sup> RUBINI Laretta, DI TOMMASO, Marco R., BARBIERI, Elisa, “*Special Economic Zones and Cluster Dynamics: China*”, International Encyclopedia of the Social & Behavioral Sciences, (2015)  
[https://www.researchgate.net/publication/274231455\\_Special\\_Economic\\_Zones\\_and\\_Cluster\\_Dynamics\\_China](https://www.researchgate.net/publication/274231455_Special_Economic_Zones_and_Cluster_Dynamics_China)

Is law subordinate to the actual circumstances or are the actual circumstances subordinate to law? Who is the mother, who is the son? The reality produces law, the reality is the mother, the law is the son.<sup>53</sup>

At the basis of all the innovations brought forward by SEZs and FTZs in China, is the concept of Experimental Legislation. Sofia Ranchordás<sup>54</sup> defines Experimental Legislation as laws or regulations made by the executive (secondary legislation) that are enacted for a period of time, on a small-scale basis, in derogation from existing law, and subject to periodic or final evaluation.

Since the establishment of the first Special Economic Zone in China in the early 80s, Experimental Legislation played a fundamental role in helping the country create its own legislative framework after the prolonged period of legislative stagnation during the Mao era. In contrast to most Western countries, the Chinese legal system is characterized by a proliferation of regulations used for trial implementation aimed at accumulating real-world experience which the national legislature can then draw upon.<sup>55</sup>

The first field in which Experimental Law was tested is that of economic law. The objective of such experimentation was that of helping the country create a legislative framework solid enough to promote the transition from a planned economy to a socialist market economy during the presidency of Deng Xiaoping.

The main idea of employing Experimental Legislation at a local level is that of using a “reforming first, amending later”<sup>56</sup> method which allows the government to test new rules in a defined area and to assess whether to elevate the small-scale reforms to the status of nationally applicable laws based on the experience and knowledge gathered during experimentation.

An interesting point to note when talking about policymaking in China is the major difference in how the process works if compared to Western rule-of-law systems. In societies founded on the rule of law, the conventional policy process holds that policy analysis, policy formulation,

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<sup>53</sup> SHEN, Guancheng, “*Rethinking local legislative power*” (论地方立法权的再认识), China Legal Science (中国法学), (1996)

<http://rdbk1.ynlib.cn:6251/qw/Paper/28190>

<sup>54</sup> RANCHORDÁS, Sofia, “*The Whys and Woes of Experimental Legislation*”, The Theory and Practice of Legislation, (2013)

<https://deliverypdf.ssrn.com/delivery.php?ID=22009012706500010112711909112610106405403808903704804201010008008111900707111208809310004203312200904504706802312506711119018052078043034093121113087091007096098089081046043006071126093006066016114000070083022125026123075030101067029101092104074112112&EXT=pdf&INDEX=TRUE>

<sup>55</sup> Martinek, Madeleine, “*Experimental Legislation in China between Efficiency and Legality*”, Springer, 2018

<sup>56</sup> BI, Yanying, “*Experimentalist approach of Chinese legislation model: from passive response to institutional design*”, The Theory and Practice of Legislation, (2015)  
<https://www.tandfonline.com/doi/pdf/10.1080/20508840.2015.1083243?needAccess=true>

and embodiment in legislation precede implementation<sup>57</sup>, while in China the whole process seems reversed as direct experience often precedes the official implementation of laws and policy analysis and codification come only after experience has been gathered.<sup>58</sup>

In 1989, at the dawn of what would later be seen as the beginning of an era of radical change in China, Yu described this experimentalist approach as “purely pragmatic”<sup>59</sup>; he probably would not have guessed that such a methodology would survive the first phases of opening-up of the Chinese economy and would become a cornerstone of Chinese policy-making. Even today, the Chinese legal system is characterized by a highly pragmatic way of thinking and legislating, aimed at adjusting regulations to the dynamically evolving daily reality.<sup>60</sup>

As Madeleine Martinek synthesizes<sup>61</sup>, the long-standing practice of the “point-to-surface technique” that allows for injecting local experience and local knowledge into the national policy process, is reflected in the concept of the SEZs (e.g. FTZs). They have decisively contributed to the gradual and successful transformation from a planned economic order to a socialist market economy.

A prerequisite for Experimental Legislation to work in SEZ and create a dynamic legislative environment is that of the delegation of central authority which is embodied in the concept of “Delegated Legislation” (授权立法-Shòuquán lǐfǎ). The 1980s and the early 1990s marked the “peak season” for Delegated Legislation.

Legislative Delegation can be seen as a manifestation of what Yu<sup>62</sup> described as the Chinese “pragmatic approach” to legislation, as it assumes that local authorities must be more familiar with local conditions and necessities and are therefore more prepared to make informed decisions for those territories; the logical conclusion is that local governments shall be given greater autonomy in policy and law making. The delegation of legislative authority pluralized

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<sup>57</sup> SCHULZ, Sandra, “How China’s Leaders Steer a Massive Nation”, Der Spiegel, (August 31, 2012) <http://www.spiegel.de/international/world/putting-the-plan-into-action-how-china-s-leaders-steer-a-massive-nation-a-843593-3.html>

<sup>58</sup> HEILMANN, Sebastian, “Experimentation under hierarchy: policy experiments in the reorganization of China’s State Sector, 1978–2008”, CID Working Paper Series 2008 No. 172, (June 2008) <https://dash.harvard.edu/bitstream/handle/1/37366179/172.pdf?sequence=1&isAllowed=y>

<sup>59</sup> YU, Xingzhong, “Legal Pragmatism in the People’s Republic of China”, Cornell Law Faculty Publications (Paper 993), (1989) <https://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=2063&context=facpub>

<sup>60</sup> MARTINEK, Madeleine, “Experimental Legislation in China between Efficiency and Legality” (Chapter 3, Chapter 4), Springer, (2018), <https://link.springer.com/book/10.1007/978-3-319-77616-3>

<sup>61</sup> MARTINEK, Madeleine, “Experimental Legislation in China between Efficiency and Legality” (Chapter 3, Chapter 4), Springer, (2018), <https://link.springer.com/book/10.1007/978-3-319-77616-3>

<sup>62</sup> YU, Xingzhong, “Legal Pragmatism in the People’s Republic of China”, Cornell Law Faculty Publications (Paper 993), (1989) <https://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=2063&context=facpub>

Chinese legislative bodies, made the legislative system more flexible and dynamic and contributed significantly to resolving many of the complex issues of economic development, creating a process of mutual learning between the central power and local lawmakers<sup>63</sup>.

Empowerment Decisions are the means by which the delegation of legislative power took place in SEZs. The Empowerment Decision of 1981 (cited in paragraph 1.2.2) authorized the local governments of Guangdong and Fujian to enact regulations in their SEZs as they saw fit, to promote the development of such zones, in line with the government's objectives. Despite the fact that the Empowerment Decision still constitutes the basis for some regulations that stem from that time and are still valid<sup>64</sup>.

Without the adoption of an "Experimental Legislation and Delegated Legislation" approach, SEZs would not have been able to operate in China; these two concepts therefore represent an important conceptual base upon which SEZs and FTZs were built upon.

## **1.5 Refocusing the Chinese Economy**

### **1.5.1 A Change of Strategy**

The second chapter of this dissertation will focus on the new generation of FTZs implemented in China since 2013; as explained in the previous paragraphs (1.2.4), one of the main elements that determine the ultimate success or failure of a FTZ is the definition of clear objectives that the government wish to reach through the implementation of this tool.

After the financial crisis of 2008, China changed its economic strategy and tried to formulate a new model of growth and development able to lead China in its next "era". Such changes deeply influence the structure of the new generation of FTZs as, exactly like the first SEZs implemented in China in the 80s, their main role is that of helping the government in experimenting with innovative policies in line with its strategic objectives.

To better understand how FTZs still help to bring innovation to the Chinese panorama, it is necessary to first understand how the Chinese economic strategy changed in the last few years and what are the new objectives of the Chinese Government.

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<sup>63</sup> MARTINEK, Madeleine, *"Experimental Legislation in China between Efficiency and Legality"* (Chapter 3, Chapter 4), Springer, (2018), <https://link.springer.com/book/10.1007/978-3-319-77616-3>

<sup>64</sup> MARTINEK, Madeleine, *"Experimental Legislation in China between Efficiency and Legality"* (Chapter 3, Chapter 4), Springer, (2018), <https://link.springer.com/book/10.1007/978-3-319-77616-3>

### **1.5.2 China After the Financial Crisis of 2008: Domestic Market and Inequality**

It is well known that China was one of the first, if not the first, major economy to recover from the financial crisis of 2008; this astonishing result was mainly obtained through the introduction of a massive stimulus programme in the last part of 2008 whose total value was equal to 12.5% of China's GDP (of that year).

Following Premier Wen Jiabao's call to make the stimulus "big, fast and effective", the programme was implemented with great force and in record time. Along with the huge fiscal injection, state-owned banks opened their spigots, and total credit grew by more than one-third in 2009. Local government inputs also far surpassed expectations. Altogether the total stimulus grew to an estimated 27% of GDP, with an injection of 19% in 2009 alone<sup>65</sup>.

Even though China coped brilliantly with the situation, the impact of the financial crisis highlighted critical aspects of the Chinese economic strategy and gave the government an incentive to reformulate its economic objectives in the following years.

Like most developing countries, China adopted an export-oriented approach to achieve economic growth and industrialization; through this strategy China achieved incredible results since the 1980s but what needed to be taken into consideration was that this strategy also entailed several downsides.

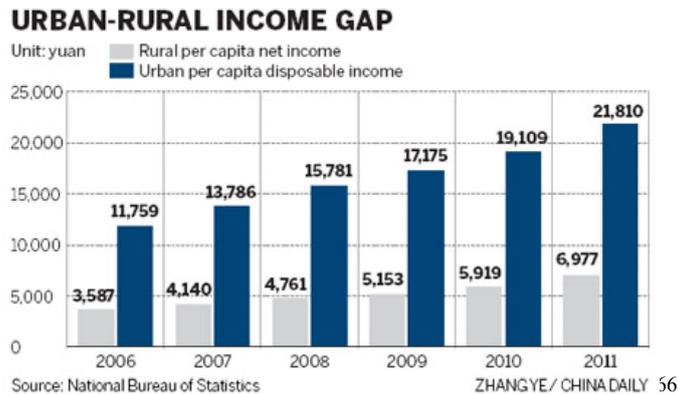
Countries that rely on an export-oriented strategy are extremely exposed to external market conditions. Big global crises such as wars, financial crises, health and environmental emergencies can deeply influence the demand for certain goods and the prices of the raw materials needed to produce them. In line with this principle, in 2008 China found itself totally exposed and at the mercy of market fluctuations and the incredible decrease in demand from the countries to which it previously exported enormous quantities of goods. This fragility led the government to change its strategy in the post-crisis period and to focus more on the enormous potential of the Chinese internal market.

In order to be able to exploit the potential of the domestic market, China's government had to take action to change some internal critical aspects.

In order to increase the extent of the domestic market, policymakers had to heavily work on the problem of the huge wealth gap between urban and agricultural areas as well as the eastern (coastal) and western part of the country.

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<sup>65</sup>WONG, Christine, "*The Fiscal Stimulus Program and Public Governance Issues in China*", OECD Journal on Budgeting (Volume 11/3), (2011)  
<https://doi.org/10.1787/16812336>



Reducing inequalities within the country became and still is a fundamental part of China's strategic objectives. The twelfth and thirteenth Five Year Plans, commonly referred to as "Happy China" and "Prosperity for the Masses", particularly focus on this problem, recognizing that such high levels of income inequality and access to services could undermine the future growth of the country.

A key moment in the path towards the reduction of inequalities was reached on July 1<sup>st</sup> 2021, when president Xi Jinping officially announced that China was able to reach its first centenary goal: building a moderately prosperous society in all respects<sup>67</sup>.

"This means that we have brought about a historic resolution to the problem of absolute poverty in China, and we are now marching in confident strides toward the second centenary goal of building China into a great modern socialist country in all respects,"

The reduction of inequality is a common theme even in the recently released Five Year Plan 2021-2025 (hereinafter referred to as The Plan) in which, among other goals, the government undertakes to improve and upgrade rural infrastructure.

#### 完善升级乡村基础设施<sup>68</sup>

推动城乡信息化融合发展，加快建设农村新一代信息基础设施，深化农村光纤宽带、移动宽带覆盖，推动有线电视网络 IP 化、智能化改造升级。加快 推动水利、公路、电力等基础设施数字化、智能化转型。推

<sup>66</sup> Image available at: [http://www.china.org.cn/china/2012-02/07/content\\_24571713.htm](http://www.china.org.cn/china/2012-02/07/content_24571713.htm)  
Source: China Daily (2012)

<sup>67</sup> "Xi declares China a moderately prosperous society in all respects", The State Council of the People's Republic of China, (July 2021)

[http://english.www.gov.cn/news/topnews/202107/01/content\\_WS60ddd47ec6d0df57f98dc472.html](http://english.www.gov.cn/news/topnews/202107/01/content_WS60ddd47ec6d0df57f98dc472.html)

<sup>68</sup> "DIGICHINA: Translation of the 14<sup>th</sup> Five-Year Plan for National Informatization", Stanford Cyber Policy Center, (January 2022)

<https://digichina.stanford.edu/work/translation-14th-five-year-plan-for-national-informatization-dec-2021/>

进乡村智慧物流发展。加快推进农田建设数字化改造，加强全国农田综合监测监管。提升乡村气象灾害监测能力。

#### **Improve and upgrade rural infrastructure<sup>69</sup>**

Promote the comprehensive development of urban and rural informationization, accelerate the construction of a new generation of rural information infrastructure, deepen the coverage of fiber optic broadband and mobile in rural areas, and promote the intelligent transformation and upgrading of IP networks. Accelerate the promotion of digitization and intelligent transformation of infrastructure like water management, roads, and electricity. Advance rural smart logistics development. Accelerate the digital transformation of farm construction, and strengthen the comprehensive management and supervision of farmlands across the entire country. Upgrade the capabilities for rural meteorological disaster supervision.

### **1.5.3 A Growing Interest Towards Environmental Sustainability**

In 2007 Zhang and Wen reported that<sup>70</sup>:

Since 1992, China has set down sustainable development as a basic national strategy. However, environmental pollution and ecological degradation in China have continued to be serious problems and have inflicted great damage on the economy and quality of life. The beginning of the 21st century is a critical juncture for China's efforts towards sustaining rapid economic development, intensifying environmental protection efforts, and curbing ecological degradation. As the largest developing country, China's policies on environmental protection and sustainable development will be of primary importance not only for China, but also the world.

It is common knowledge that, at the international level, China does not have the best reputation in terms of environmental sustainability.

According to the United Nations Environment Programme<sup>71</sup>, China's GHG (Greenhouse Gas) emissions increased steadily since 1990 and reached an historic peak in 2018 with a total 13.739,79 million tonnes of GHG.

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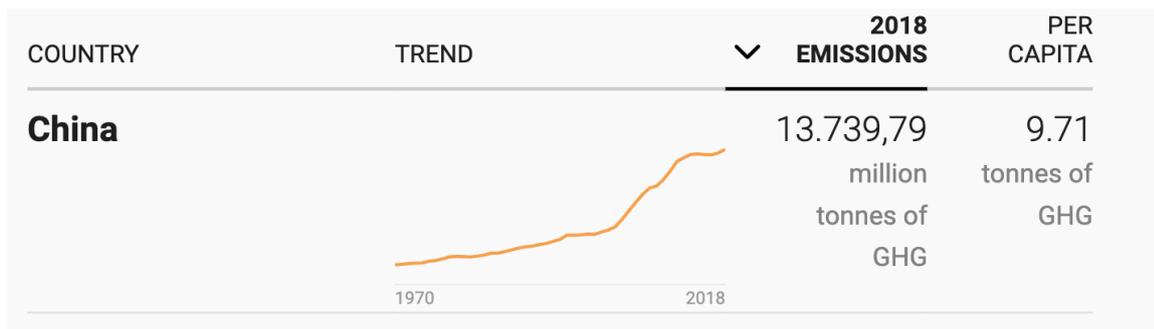
<sup>69</sup> “Shísìwǔ” guójiā xìnxiā huà guīhuà, “十四五”国家信息化规划, “14th Five-Year” National Informatization Plan (December 2021)

<http://www.gov.cn/xinwen/2021-12/28/5664873/files/1760823a103e4d75ac681564fe481af4.pdf>

<sup>70</sup> ZHANG, Kunming, WEN, Zongguo, “Review and challenges of policies of environmental protection and sustainable development in China”, *Journal of Environmental Management* (Volume 88 Issue 4), (September 2008) <https://doi.org/10.1016/j.jenvman.2007.06.019>

<sup>71</sup> “State of the Climate: Data You Need to Know”, The United Nations Environment Programme (UNEP), (November 2021)

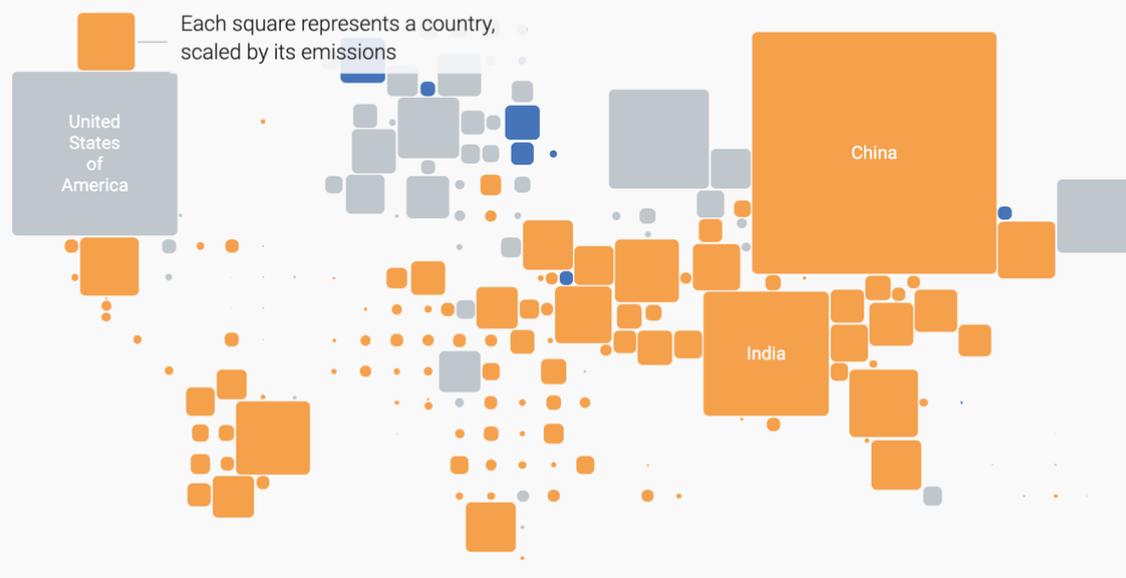
[https://www.unep.org/explore-topics/climate-action/what-we-do/climate-action-note/state-of-climate.html?gclid=Cj0KCQjwvZCZBhCiARIsAPXbajuS62s0ypJZ6HEek5nAgdbl255H07nuwFj4dDcoTZ983qUWx0oHLewaAgwJEALw\\_wcB](https://www.unep.org/explore-topics/climate-action/what-we-do/climate-action-note/state-of-climate.html?gclid=Cj0KCQjwvZCZBhCiARIsAPXbajuS62s0ypJZ6HEek5nAgdbl255H07nuwFj4dDcoTZ983qUWx0oHLewaAgwJEALw_wcB)



GHG emissions are choking our world, mitigation opportunities exist but GHG emissions continue to rise

How much have **emissions changed since 1990**

■ Lower ■ Stagnant ■ More than in 1990



It is in this concerning scenario that China officially confirmed its commitment to tackle climate change under the terms of the Paris Agreement, submitting its NDC (Nationally Determined Contribution) plan<sup>72</sup> and committing to some major targets to reduce its environmental impact. In terms of quantitative targets for 2030, China undertakes to cut CO<sub>2</sub> emissions per unit of GDP by more than 65% from 2005 levels, increase the share of non-fossil energy to around 25% and raise forest stock volumes by 6 billion cubic meters from 2005 levels. In addition to the strengthened quantitative goals, China has now pledged to peak emissions “before 2030”, whereas its first NDC had aimed to do this “around 2030” and to “make best efforts to peak

<sup>72</sup> “China’s Achievements, New Goals and New Measures for Nationally Determined Contributions” (Translated version), United Nations Framework Convention on Climate Change Website <https://unfccc.int/sites/default/files/NDC/2022-06/China%E2%80%99s%20Achievements%2C%20New%20Goals%20and%20New%20Measures%20for%20Nationally%20Determined%20Contributions.pdf>

early”. Furthermore, China has officially added its goal of “achieving carbon neutrality before 2060” into the latest document<sup>73</sup>.

All of these international commitments find their legitimacy in the latest “Five Year Plan”; in The Plan energy and climate targets take center stage. For the first time since 1986, China has omitted to include a target GDP, focusing instead on setting longer-term climate goals and introducing the idea of a CO<sub>2</sub> emissions cap<sup>74</sup>.

It is therefore clear how environmental goals and research in renewable energies and green industries are now a key element of Beijing’ policies for the future.

#### **1.5.4 The Road Towards Technological Independence**

As mentioned in the previous paragraphs, China’s political leadership recently released the 14th Five-Year Plan (2021–2025) along with another important document, “The Long-Range Objectives Through the Year 2035”.

The proposals mark the end of the export-led economic strategy that has driven development for 40 years and a shift towards a Dual-Circulation growth pattern driven by domestic demand supplemented by external demand. The Dual Circulation model can be described as a new development pattern whereby domestic and international economic circulation boost each other, with the domestic circulation as the mainstay<sup>75</sup>.

This new strategy places innovation at its core and it positions technological independence as a strategic pillar of national development<sup>76</sup>.

Having joined the WTO, the constant push of globalization forced China to pursue efficiency mainly based on comparative advantage. As a result, China relies heavily on global supply chains creating once again fragilities that, in the last few years, have become a real inconvenience for the country, especially in the semiconductor industry.

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<sup>73</sup> LIU, Hongqiao, YOU, Xiaoying, “Q&A: What does China’s new Paris Agreement pledge mean for climate change?”, Carbon Brief, (December 2021)

<https://www.carbonbrief.org/qa-what-does-chinas-new-paris-agreement-pledge-mean-for-climate-change/>

<sup>74</sup> WANG, Lin, LI, Olivia, “China’s 5-year plan and its impact on sustainable business”, Greenbiz, (May 2021)

<https://www.greenbiz.com/article/chinas-5-year-plan-and-its-impact-sustainable-business#:~:text=The%20FYP%20set%20an%2018,prevention%20to%20carbon%20emissions%20reduction.>

<sup>75</sup> HUANG, Xianhai, YU, Pan, SONG, Xueyin, CHEN, Hangyu “Strategic focus study on the new development pattern of ‘dual circulation’ in China under the impact of COVID-19”, Transnational Corporations Review

<https://doi.org/10.1080/19186444.2021.1959822>

<sup>76</sup> JIN, Jianmin, “How China’s ‘technological independence’ strategy will transform its economy”, East Asia Forum, (November 2020)

<https://www.eastasiaforum.org/2020/11/27/how-chinas-technological-independence-strategy-will-transform-its-economy/>

As Jin reports<sup>77</sup>, China's semiconductor chips, for example, rely mainly on imports from foreign producers. According to a survey by US industry groups<sup>78</sup>, the Chinese share of global semiconductor demand is around 35%, while the Chinese share of the world's integrated device manufacturers, which basically means companies capable of designing, manufacturing and selling integrated circuit products, represents more or less 1%.

In an era characterized by systemic crisis<sup>79</sup> China has become more vulnerable to its own industrial supply chain and has been forced to strengthen it through technological independence measures that aim to protect national security and the economy. In practice this means shifting from an "import, localize, absorb" model to a "technology independence" approach able to "create innovation" and keep up, or even overtake advanced countries as it concerns global technology.

As To correctly points out<sup>80</sup>, human capital is and will be a decisive factor in determining the failure or success of China's technological development in the future as:

Human capital underpins much of the technological progress in the semiconductor industry. Chinese policymakers should understand that money alone cannot create innovation and talent overnight. A shortage of domestic talent remains a critical bottleneck in China's technological catch-up.

Chapter 2 will cover in detail the new generation of Free Trade Zones and how they introduce innovation in the People's Republic of China in line with the new objectives and context that characterize the country while the topic of human capital and talent attraction will be the focus of Chapter 3.

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<sup>77</sup> JIN, Jianmin, "How China's 'technological independence' strategy will transform its economy", East Asia Forum, (November 2020)

<https://www.eastasiaforum.org/2020/11/27/how-chinas-technological-independence-strategy-will-transform-its-economy/>

<sup>78</sup> "U.S. Companies Dominate Worldwide IC Marketshare", IC Insights, (June 2019)

<https://www.icinsights.com/data/articles/documents/1176.pdf>

<sup>79</sup> The 2008 financial crisis, the Covid-19 pandemic, the war in Ukraine and the export control measures taken by the US in the last years are just a few examples of external factors that highly influence China's supply chain.

<sup>80</sup> TO, Yvette, "Rethinking China's Strategy of Technological Independence", Georgetown Journal of International Affairs, (June 2021)

<https://gjia.georgetown.edu/2021/06/22/rethinking-chinas-strategy-of-technological-independence/>

## CHAPTER 2

# Experimentation of Innovative Policies in the New Generation of Free Trade Zones

### 2.1 The New Generation of FTZs in China

#### 2.1.1 Introduction

The reasons that led the PRC to first experiment with Special Economic Zones in the 80s have been described in the previous chapter and many of those points remain valid and current even when discussing the new model of 自由贸易区 Free Trade Zones (Ziyóu màoyì qū) introduced in the Chinese territory since 2013.

What is important to keep in mind going forward is that even though increasing trade volume and attracting foreign investment are still important goals of FTZs, the new and ideal FTZs are not only economic pilot zones, but also regulatory innovation zones<sup>1</sup>.

According to several experts, one of the main reasons that led the Chinese government to create a new generation of FTZs in 2013 was the necessity to create a new model of development for the country; a model no longer based on the replication of the past development path from when China's economy was still relatively small and undeveloped.

The extraordinary accomplishments that the Chinese economy was able to achieve in the last few decades are universally recognized. As Yao and Whalley report<sup>2</sup>, with both increasing foreign capital inflows and a trade imbalance induced by a fixed exchange rate, as well as hot money for speculative RMB appreciation, China's foreign reserves increased rapidly. This export and investment-oriented model allowed China to achieve great economic performances but now shows its drawbacks and cannot sustain itself for another one or two decades; there is simply no more room globally for the second largest economy in the world to develop like a small export-oriented developing country.

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<sup>1</sup>PENG, Delei and FEI, Xiuyan, *China's Free Trade Zones: "Regulatory Innovation, Legal Assessment and Economic Implication"*, The Chinese Economy, (2017)  
DOI: 10.1080/10971475.2017.1321886

<sup>2</sup>YAO, Daqing and WHALLEY, John, *"The China (Shanghai) Pilot Free Trade Zone: Background, Developments and Preliminary Assessment of Initial Impacts"*, The World Economy (Working Paper 20924 ), (2016)  
DOI 10.3386/w20924

It is undeniable that even though China is now integrated into the world economy and could also be defined as “the engine” of such economy<sup>3</sup>, there are still many ways in which the PRC is keeping a separate path compared to the rest of the world. Some areas that underline these existing differences and that therefore need to be addressed by the Central Government and rectified are: floating currency, capital account convertibility, the opening of the financial sector for global financial enterprises, protection of domestic industry, export subsidization and several others. Experts believe that such a radical change in direction cannot be achieved with the introduction of a single policy but that it requires a comprehensive shift in the approach to the economic policy of China<sup>4</sup>. To counter this, Chinese authorities have explicitly clarified that SHPFTZ (Shanghai Pilot Free trade zone) is being treated as the laboratory for testing administrative and financial sector reform which will take place in the future based on the experiences of SHPFTZ.

Leaders have called the establishment of the Shanghai FTZ a landmark, innovative moment, similar to the creation of the Shenzhen SEZ near Hong Kong more than three decades earlier<sup>5</sup>. The areas that the Chinese government hopes to improve thanks to the introduction of the new generation of FTZs are several and different but legislative innovation in several fields remains at the core of the project.

According to the “Framework Plan for the China (Shanghai) Pilot Free Trade Zone” (国法【2013】38号)<sup>6</sup>, the establishment of the China (Shanghai) Free Trade Zone is a strategic decision by the Central Government and is a significant measure to boost China’s reform and opening up under the new circumstances. The Shanghai Free Trade Zone is critically meaningful and aims to expedite the functional transformation of the government, explore administrative innovation, stimulate trading and investment facilitation, and accumulate experience on achieving a more open China Economy.

The major tasks and measures that the State Council outlines for the SHPFTZ (Shanghai Pilot Free Trade Zone) are:

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<sup>3</sup>PARK, Donghyun, SHIN, Kwanho, “*The People's Republic of China as an Engine of Growth for Developing Asia? Evidence from Vector Autoregression Models*”, ADB Economics Working Paper Series No. 175, (2009) <https://www.econstor.eu/bitstream/10419/109364/1/ewp-175.pdf>

<sup>4</sup> SAMDERSHI, Aditya, GUPTA, Vineet and DHARWAL, Mridul, “*The Strategic Role of Special Economic Zones in Economic Development: A Special Case of Shanghai Free Trade Zone*”, 1st PAN IIT International Management Conference, (2018)

<sup>5</sup>TIEFENBRUN, Susan, “*U.S. Foreign Trade Zones and Chinese Free Trade Zones: A Comparative Analysis*”, Journal of International Business and Law (Volume 14, Issue 2), (2015)

<https://scholarlycommons.law.hofstra.edu/cgi/viewcontent.cgi?article=1271&context=jibl>

<sup>6</sup> APPENDIX A

- 1- Accelerate the functional transformation of government: this task mainly covers the establishment of an administrative system that fits the requirements of modern international trade and investment standards. Innovation in this field mainly concerns areas such as: transparency in administrative management, enhancement of IP protection, quality and technical supervision and fair competition, the introduction of disclosure mechanisms that reflect the participation of investors and the simplification of the business registration process.
- 2- Opening up of investment sectors: this task mainly covers the opening up of the service sector and the consequent suspension or cancellation of market access restrictions in fields such as: financial services, transportation services, commerce and trade services, professional services, cultural services and public services. An important development is the creation of a “Negative list”<sup>7</sup>; from the rule of law perspective, the “negative list” approach connotes that in cases where the sovereign has prescribed no rule, the subject has the liberty to act, or forbear, according to his/ her discretion<sup>8</sup>. The last important point to be mentioned in this field is that of the setting up of a system to support outbound investment; under proper risk control, the SHPFTZ will pilot RMB capital account convertibility, interest rate liberalization and cross-border use of the RMB<sup>9</sup>.
- 3- Promote the transformation of China’s trade development approach: to change from a low value-added trade pattern, the SHPFTZ is cultivating new trading types and functions, aiming to increase China’s competitive advantage and enhance the country’s position in the global trade value chain by focusing on the development of technology, brands, quality and service<sup>10</sup>.

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<sup>7</sup> “Shanghai FTZ 2013 Negative list”

<https://scrip.pharmaintelligence.informa.com/-/media/pmbi-old-site/supporting-documents/pharmasia-news/2013/december/negative-list.pdf>

<sup>8</sup>LIU, Zuozhen and LI, Jiannan, “*The Rule of Law Experiment in China’s Pilot Free Trade Zones: The Problems and Prospects of Introducing Hong Kong Law into Guangdong*”, International Journal of Law and Legal Jurisprudence Studies (Volume 1, Issue 7), (9 May 2018)

DOI:10.1007/s40803-018-0076-3

<sup>9</sup>YAO, Daqing and WHALLEY, John, “*The China (Shanghai) Pilot Free Trade Zone: Background, Developments and Preliminary Assessment of Initial Impacts*”, The World Economy (Working Paper 20924 ), (2016)

DOI 10.3386/w20924

<sup>10</sup> YAO, Daqing and WHALLEY, John, “*The China (Shanghai) Pilot Free Trade Zone: Background, Developments and Preliminary Assessment of Initial Impacts*”, The World Economy (Working Paper 20924 ), (2016)

DOI 10.3386/w20924

From these premises, it is clear that very high expectations were set at the beginning of this project and what many expected to see was a radical change in direction in terms of policies and approaches to the world economy.

In Chapter 1 we discussed the main features and advantages of the introduction of 经济特区 in China in the early 1980s; the Delegation of Power granted to those territories by the Central Government was unprecedented and the result was the creation of relatively independent zones based on a flexible structure that allowed them to experiment with new and innovative policies bringing innovation in the Chinese panorama at several levels.

From the “management independence” point of view, 自由贸易区 follow the same principles and, as we will see in the following paragraphs, they were granted exceptional freedom in terms of governance and economic management. Once again we can talk not only of Preferential Policies 优惠政策 applied in these zones but also of Special/ Policies 特殊政策 as in the case of 经济特区.

The main difference with other types of Special Zones in China such as 经济技术开发区, 高新技术开发区 and 国家级新区 is therefore and once again one of extension as it happened with 经济特区.

Such difference in extension can be mainly divided into three categories:

- Geographical Extension: these areas are usually way more extended than 经济技术开发区, 高新技术开发区 and 国家级新区; they are not limited to a single district or area inside a city, as they usually extend in the whole urban area as it happened with 经济特区 in Shenzhen, Zhuhai, Xiamen etc.
- Management Extension: as in the case of 经济特区, these areas are granted unprecedented freedom in terms of governance and economic policy management; they are not, for example, under the direct leadership and specific jurisdiction of the municipal’s people government.
- Scope Extension: the scope of Free Trade Zones is once again very broad if compared to other types of Special Zones in China. The objectives that the government wants to reach through their implementation are not limited the attraction of FDI or industrial development but go beyond and have also to do with a more general institutional innovation and the experimentation with new and innovative policies.

### 2.1.2 经济特区 and 自由贸易区: Main Differences

As explained in the introduction, 经济特区 and 自由贸易区 share some similarities in terms of extension and delegated power; if not analyzed closely, the two concepts can appear interchangeable and almost identical while in reality this is not the case.

First of all the focus of 经济特区 is mainly that of export and manufacturing activities while that of 自由贸易区 is that of entrepot trade.

Secondly, it is important to remember that these two types of “Special Zones” share very different backgrounds and were introduced in two completely different contexts. The background of 经济特区 is that of the process of transition from a planned economy to a market economy ,while 自由贸易区 were introduced with an already stable market economy system (even if with Chinese characteristics).

Lastly there is a fundamental change in approach on how they operate and attract investors:

经济特区好比一种“放饵钓鱼”的方式，国家在开放和引进外资、税收、财政、金融、立法等方面给予经济特区政策优惠，并允许经济特区在一些领域先行先试，根据自身情况采取灵活发展措施创造优越的政策环境。自贸区则好比一种“开闸引鱼”的方式，国家并不是通过简单地给政策优惠来进行招商引资，而是通过制度创新，消除政策壁垒，简化程序、简化干预、放开准入，给予国资、外资、民营同等的国民待遇等方式，给招商引资创造良好的外部环境。<sup>11</sup>

The Special Economic Zone is like a way of “bait fishing”. The state gives preferential policies to the Special Economic Zone in terms of opening to and introducing foreign capital, taxation, finance, legislation, etc. Flexible development measures create a favorable policy environment. The Free Trade Zone is like a way of "opening the gates to attract fish". The state does not attract investment by simply giving preferential policies, but through institutional innovation, eliminating policy barriers, simplifying procedures, simplifying intervention, and liberalizing access to give state-owned, foreign-funded, and private-owned assets equal national treatment, and create a good external environment for attracting investment.

### 2.1.3 Development Process and Geographical Extension of the New FTZs

The decision to choose Shanghai as a first test field for this new generation of FTZs is extremely strategic and comes with several advantages. First of all, Shanghai possesses a unique geographical advantage. It is located in the golden waterway, at the mouth of the Yangtze River

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<sup>11</sup> Ziyóu màoyì qū hé jīngjì tèqū de qūbié zài nǎlǐ?, 自由贸易区和经济特区的区别在哪里?, What is the difference between a Free Trade Zone and a Special Economic Zone?, 中外企业家联合会(Federation of Chinese and Foreign Entrepreneurs), (2021)  
<https://www.zhihu.com/question/411928029/answer/1407170812>

and in the middle of the eastern coast. Shanghai's economy can extend to the Yangtze River delta and the entire Yangtze River watershed through river transport. The adjacency of the city to eastern waters and the Pacific is therefore a notable geographic advantage of Shanghai in relation to the construction of an international shipping hub within its territory<sup>12</sup>.

Secondly, at the moment of its funding in 2013, the Shanghai FTZ already possessed a solid base. The FTZ was created thanks to the fusion of four existing customs supervisory zones, including Waigaoqiao Bonded Zone, Waigaoqiao Bonded Logistic park, Yangshan Bonded Port and Pudong Airport Comprehensive Bonded Zone. In 2014, it was expanded by incorporating Lujiazui Financial Area, Jinqiao Export Processing Zone, and Zhangjiang High Tech Park, expanding the area of the Free Trade Zone from 28.78 square kilometers to 120.72 square kilometer<sup>13</sup>. Under the "Overall Plan for the Lingang New Area of the China (Shanghai) Pilot Free Trade Zone"<sup>14</sup>, promulgated on 6 August 2019, a new area of the SFTZ (the Lingang New Area) is to be set up to the south of the Dazhi river, east of Jinhui Port and south of Xiaoyangshan Island and Pudong International Airport in Shanghai. Initially, the Lingang New Area will extend across 119.5 sq km, including 76.5 sq km in the southern part of the Lingang district, 18.3 sq km of Xiaoyangshan Island and 24.7 sq km to the south of Pudong International Airport.

According to the development goals stated in the Overall Plan:

"By 2025, a relatively mature investment and trade liberalization and facilitation system will be established, a number of functional platforms with a higher degree of openness will be created, a group of world-class enterprises will be gathered, the regional creativity and competitiveness of the market will be significantly enhanced, and the economic strength and total economic volume of the region will see a significant rise. By 2035, a special economic function zone with strong international market influence and competitiveness will be built, more mature and well rooted institutional achievements will be formed, and the core function of global high-end resource factor allocation will be created, helping China further integrate with the global economy."

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<sup>12</sup>WAN, Zheng, ZHANG, Yang, WANG, Xuefeng, CHEN, Jihong,, "Policy and politics behind Shanghai's Free Trade Zone Program", Journal of Transport Geography, (2013)

<https://www.sciencedirect.com/science/article/abs/pii/S0966692313002135>

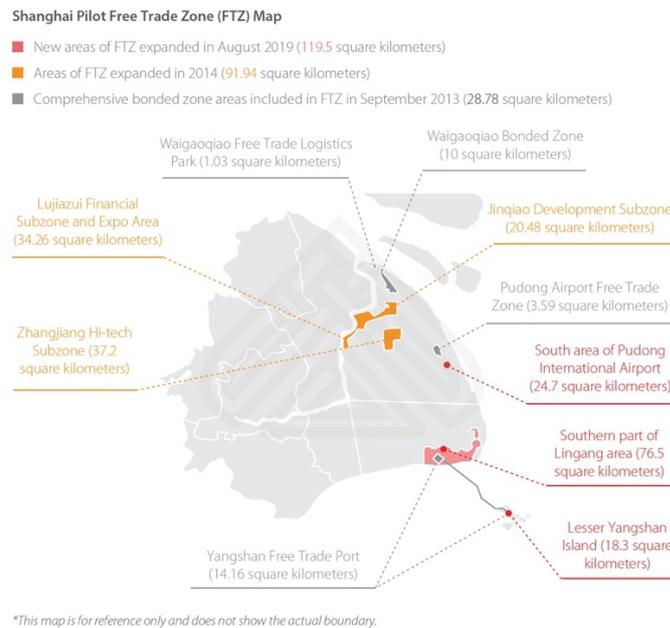
<sup>13</sup> HUANG, Dechun, VAN, Vu Thi, HOSSAIN, Ekram and HE. Zhengqi, "Shanghai Pilot Free Trade Zone and Its Effect on Economic Growth: A Counter-Factual Approach", Open Journal of Social Sciences, (2017)

<https://www.scirp.org/journal/paperinformation.aspx?paperid=78924>

<sup>14</sup>Guówùyuàn guānyú yìn fā zhōngguó (shànghǎi) zìyóu mào yì shì yàn qū: Lín gǎng xīn piàn qū zǒng tǐ fāng'àn de tōngzhī guó fā, 国务院关于印发中国（上海）自由贸易试验区：临港新片区总体方案的通知 国发（2019）15号 (Overall Plan for the Lingang New Area of the China (Shanghai) Pilot Free Trade Zone)

<http://lawinfochina.com/display.aspx?id=30901&lib=law>

Here is an adjourned map of the extension of the SHFTZ.



Since 2013, many new FTZs have been inaugurated in the Chinese territory, leading us to believe that the SHPFTZ must have been considered a huge success by the Central Government. According to the Chinese Ministry of Commerce (MOFCOM)<sup>16</sup>, in 2021, China's 21 FTZs contributed 17.3% of China's total foreign trade (Rmb 6.8 tln) and 18.5% of China's foreign investment inflows (Rmb 213 bln).

Here is a list<sup>17</sup> and map<sup>18</sup> of the updated number and location of the new generation of FTZs present on the PRC's territory:

1. Shanghai Free Trade Zone
2. Guangdong Free Trade Zone
3. Tianjin Free Trade Zone
4. Fujian Free Trade Zone
5. Chongqing Special Economic Zone
6. Sichuan Free Trade Zone
7. Shaanxi Special Economic Zone
8. Henan Free Trade Zone
9. Zhejiang Free Trade Zone

<sup>15</sup> CYRILL, Melissa, "Shanghai Pilot Free Trade Zone (FTZ) Map", China Briefing, (2019) [https://www.china-briefing.com/news/wp-content/uploads/2019/08/Shanghai-Pilot-Free-Trade-Zone-FTZ-Map\\_1.jpg](https://www.china-briefing.com/news/wp-content/uploads/2019/08/Shanghai-Pilot-Free-Trade-Zone-FTZ-Map_1.jpg)

<sup>16</sup> "Free Trade Zones in China", The Canadian Trade Commissioner Service in China, (2022) <https://www.tradecommissioner.gc.ca/china-chine/ftz-zle.aspx?lang=eng>

<sup>17</sup> "FDI China Exclusive: The 21 Free Trade Zones Guide 2022", FDI CHINA, (May 2021) <https://www.fdicchina.com/blog/fdi-china-exclusive-the-21-free-trade-zones-guide-2021/>

<sup>18</sup> "FDI China Exclusive: The 21 Free Trade Zones Guide 2022", FDI CHINA, (May 2021) <https://www.fdicchina.com/blog/fdi-china-exclusive-the-21-free-trade-zones-guide-2021/>

10. Hebei Free Trade Zone
11. Liaoning Special Economic Zone
12. Hainan Free Trade Port
13. Jiangsu Free Trade Zone
14. Shandong Free Trade Zone
15. Hebei Free Trade Zone
16. Heilongjiang Free Trade Zone
17. Guangxi Free Trade Zone
18. Yunnan Free Trade Zone
19. Beijing Free Trade Zone
20. Anhui Free Trade Zone
21. Hunan Free Trade Zone



19

According to the MOFCOM<sup>20</sup>, China's pilot FTZs have demonstrated successful practice in 278 cases of innovation in institutional reform promoted at the national level, including fundamental reforms such as negative lists for foreign investment; at the local level, about 1,400 institutional innovations from 18 pilot FTZs have been promoted within the provincial regions where they are located

In this chapter I will present and analyze some of the most innovative aspects introduced by the Chinese Government through this new generation of FTZs, in order to determine whether such high expectations for change and innovation have been met and if FTZs can still be considered a valid tool to promote innovation in the Chinese panorama.

<sup>19</sup> "Free Trade Zones in China", The Canadian Trade Commissioner Service in China, (2022)  
<https://www.tradecommissioner.gc.ca/china-chine/ftz-zle.aspx?lang=eng>

<sup>20</sup> "Pilot free trade zones, China's vanguard of reform", The State Council of the People's Republic of China (Official website, English version), (July 2021)  
[http://english.www.gov.cn/policies/policywatch/202107/11/content\\_WS60ea26c2c6d0df57f98dcb41.html](http://english.www.gov.cn/policies/policywatch/202107/11/content_WS60ea26c2c6d0df57f98dcb41.html)

### 2.1.4 Legality and Legitimacy of the New FTZs

To better understand how FTZs in China work and how they can bring innovation in the Chinese panorama, it is imperative to first understand how they are governed and what laws allow them to exist and operate in the first place.

From the Chinese Domestic Law perspective, FTZs find their legitimacy both in the Constitution and in the Legislation Law of 2000 (amended in 2015).

Article 89 (point 1 and 15) of the Chinese Constitution state that the State Council has the right:

(一) 根据宪法和法律，规定行政措施，制定行政法规，发布决定和命令;<sup>21</sup>

(1) to adopt administrative measures, enact administrative regulations and issue decisions and orders in accordance with the Constitution and other laws;<sup>22</sup>

(十五) 批准省、自治区、直辖市的区域划分，批准自治州、县、自治县、市的建置和区域划分;<sup>23</sup>

(15) To approve the geographic division of provinces, autonomous regions, and municipalities directly under the Central Government, and to approve the establishment and geographic division of autonomous prefectures, counties, autonomous counties, and cities;<sup>24</sup>

Article 9 of the Legislation Law of 2000 further specifies that the National People's Congress and its Standing Committee may authorize the State Council to draw up regulations which will fill the legal gaps if necessary. This right has been further specified in the amended version of the Legislation Law in 2015; article 13 of the amended Legislation Law states that:

条全国人民代表大会及其常务委员会可以根据改革发展的需要，决定就行政管理等领域的特定事项授权在一定期限内部分地方暂时调整或者暂时停止适用法律的部分规定。<sup>25</sup>

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<sup>21</sup> Zhōnghuá rénmín gònghéguó xiànfǎ (dì sān zhāng: Guójiā jīgòu), 中华人民共和国宪法(第三章:国家机构), Constitution of the People's Republic of China (Chapter III The Structure of the State) [http://www.gov.cn/guoqing/2018-03/22/content\\_5276318.htm](http://www.gov.cn/guoqing/2018-03/22/content_5276318.htm)

<sup>22</sup> "Constitution of the People's Republic of China" (Chapter III: The Structure of the State), (Amended Version of March 2004)

[http://www.npc.gov.cn/zgrdw/englishnpc/Constitution/2007-11/15/content\\_1372967.htm](http://www.npc.gov.cn/zgrdw/englishnpc/Constitution/2007-11/15/content_1372967.htm)

<sup>23</sup> Zhōnghuá rénmín gònghéguó xiànfǎ (dì sān zhāng: Guójiā jīgòu), 中华人民共和国宪法(第三章:国家机构), Constitution of the People's Republic of China (Chapter III The Structure of the State)

[http://www.gov.cn/guoqing/2018-03/22/content\\_5276318.htm](http://www.gov.cn/guoqing/2018-03/22/content_5276318.htm)

<sup>24</sup> "Constitution of the People's Republic of China" (Chapter III: The Structure of the State), (Amended Version of March 2004)

[http://www.npc.gov.cn/zgrdw/englishnpc/Constitution/2007-11/15/content\\_1372967.htm](http://www.npc.gov.cn/zgrdw/englishnpc/Constitution/2007-11/15/content_1372967.htm)

<sup>25</sup> Zhōnghuá rénmín gònghéguó lìfǎ fǎ (2015 xiūzhèng), 中华人民共和国立法法(2015修正), Legislation Law of the People's Republic of China (amended version), issued by the National People's Congress, (15/03/2015)

[http://www.npc.gov.cn/zgrdw/npc/dbdhhy/12\\_3/2015-03/18/content\\_1930713.htm](http://www.npc.gov.cn/zgrdw/npc/dbdhhy/12_3/2015-03/18/content_1930713.htm)

The National People's Congress and its Standing Committee may, as needed for reform and development, decide to authorize the temporary adjustment or temporary suspension of the local application of certain provisions of law during a specified period regarding specific matters in the administrative management and other fields.

Many experts believe that this newly inserted provision reflects the Party's awareness of the continuing challenge of handling the relationship between (economic and legal) reform and legality, that is, to allow for a deviation from current state laws and regulations while still upholding the authority of law by officially providing a legal basis for the empowerment decision<sup>26</sup>.

As Peng and Fei report<sup>27</sup>, in 2013, the Standing Committee of the National People's Congress authorized the State Council to establish the SHFTPZ and selectively adopted parts of the Wholly Foreign-owned Enterprise Law, the Chinese-Foreign Equity Joint Venture Enterprise Law, and the Chinese-Foreign Contractual Joint Venture Enterprise Law for creating the new legal framework for the zone<sup>28</sup>. In 2015, the Standing Committee also granted the State Council the authority to establish the other three FTZs. Therefore, the establishment of the FTZs has its legitimacy.

A very important aspect of Article 13 of the amended version of the Legislation Law is the limits it imposes on legislative delegation; legislative delegation has now to comply with the imperative of determinacy where the time, content, purpose and scope have to be clearly defined in order to outlaw general delegations that may question the legislative hierarchy between laws and interim regulations<sup>29</sup>.

When establishing a FTZ, domestic law is not the only legal framework that needs to be taken into consideration. Since 2001, China is also a member of the World Trade Organization (WTO) and therefore needs to respect its obligations. It is possible to set up a Free Trade Zone under the provisions of the WTO but there are certain requirements that the PRC needs to comply with. According to the Article 2(B) of the "Accession of the People's Republic of China" (WT/L/432, 23 November 2001)<sup>30</sup>:

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<sup>26</sup>WU, LI, "Analyzing the legislation law of the People's Republic of China" (中华人民共和国立法法解读), Law Press China (法制出版社), Beijing

<sup>27</sup>PENG, Delei and FEI, Xiuyan, "China's Free Trade Zones: Regulatory Innovation, Legal Assessment and Economic Implication", The Chinese Economy, (2017)  
DOI: 10.1080/10971475.2017.1321886

<sup>28</sup> These three laws have been substituted in 2019 by the introduction of the FIL (Foreign Investment Law of the People's Republic of China). The FIL is the basic law governing FDI in China, establishing core principles for the promotion, protection and market access of foreign investment. One key innovation of the FIL is that it promises foreign enterprises "national treatment", on a par with domestic enterprises, for permitted investments.

<sup>29</sup> MARTINEK, Madeleine, "Experimental Legislation in China between Efficiency and Legality" (Chapter 3, Chapter 4), Springer, (2018), <https://link.springer.com/book/10.1007/978-3-319-77616-3>

<sup>30</sup> "Accession of the People's Republic of China", World Trade Organization (WT/L/432), (November 23, 2001)

1. China shall notify to the WTO all the relevant laws, regulations and other measures relating to its special economic areas, listing these areas by name and indicating the geographic boundaries that define them. China shall notify the WTO promptly, but in any case within 60 days, of any additions or modifications to its special economic areas, including notification of the laws, regulations and other measures relating thereto.
2. China shall apply to imported products, including physically incorporated components, introduced into the other parts of China's customs territory from the special economic areas, all taxes, charges and measures affecting imports, including import restrictions and customs and tariff charges, that are normally applied to imports into the other parts of China's customs territory.
3. Except as otherwise provided for in this Protocol, in providing preferential arrangements for enterprises within such special economic areas, WTO provisions on non-discrimination and national treatment shall be fully observed.

In addition to these obligations, through the “Accession of the People’s Republic of China” (WT/L/432)<sup>31</sup>, the PRC also committed to regularly issuing publications providing information on China’s foreign trade system and the administrative regulations and directives relating to foreign trade on the website of the Ministry of Commerce of the People’s Republic of China and in periodicals, China shall also guarantee that any preferential arrangements provided to foreign-invested enterprises located within the special economic areas would be provided on a nondiscriminatory basis. Finally, under the WTO agreements, China has committed that it would make available to the WTO members a translated version of all the laws, regulations, and other measures which may affect trade in goods, services, and intellectual property.

## **2.2 The Main Advantages and Benefits Provided by Free Trade Zones**

To summarize the concept once again, a Free Trade Zone (FTZ) is an economic zone where companies can operate under special policies meant to promote and benefit import, export and trade in general.

FTZs in China allow for a faster and more streamlined customs process and offer vast space for warehousing, supply chain management, procurement and distribution and handling<sup>32</sup>; in the

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<https://www.worldtradelaw.net/document.php?id=misc/ChinaAccessionProtocol.pdf&mode=download>

<sup>31</sup> “*Report of the Working Party on the Accession of China*”, World Trade Organization, (WT/ACC/CHN/49), (October 2001)

<https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=Q:/WT/ACC/CHN49.pdf&Open=True>

<sup>32</sup> “*Open a Company in a Free Trade Zone*”, FDI China, (2022)

<https://www.fdicchina.com/china-free-trade-zone/>

PRC they have been implemented by the Central Government to create an economic upgrade, an international business environment that conforms to international practices and to require international competitiveness for both domestic and foreign investment<sup>33</sup>.

But what are in practice the main advantages that 自由贸易区 offer in China and why should companies feel attracted to invest in these zones? The answer can be synthesized in three points: favorable administrative measures, optimized business environment and strong human capital<sup>34</sup>. As it concerns favorable administrative measures, the main points that make FTZs attractive are:

- Reduced corporate income tax that varies from FTZ to FTZ;
- Duty-free imports and exports;
- Bonded warehouse capacity: companies are authorized to store their merchandise in a Free Trade Zone for an unlimited amount of time;
- Streamlined port and customs operations;
- Simplified company registration process;
- Faster value added tax refund.

As it concerns optimized business environment, the main points that make FTZs attractive are:

- Targeted policy liberalization in specific industries;
- Purpose-built clustered industrial zones;
- Reduced foreign exchange controls;
- Additional liberalizations provided by the new Foreign Investment Law (analyzed in the following paragraphs on Negative Lists).

As it concerns strong human capital aspect, the main points that make FTZs attractive are:

- Subsidies and tax benefits for recruitment of highly skilled workers
- Partnerships with universities to nurture young talents locally

This last topic will be specifically analyzed in Chapter 3.

Among the other significant advantages of establishing a company in a Free Trade Zone is the attention given to the protection of Intellectual Property. As reported by The Diplomat<sup>35</sup>, foreign firms have long complained that enforcing their intellectual property rights in China is difficult due to local judicial protectionism, challenges in obtaining evidence, small damage

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<sup>33</sup> LI, Sujuan, LIU, Jiaguo, KONG Yudan, “*Pilot free trade zones and Chinese port-listed companies performance: An empirical research based on quasi-natural experiment*”, Transport Policy (Volume 111), (September 2021) <https://doi.org/10.1016/j.tranpol.2021.07.022>

<sup>34</sup> “*Free Trade Zones in China*”, The Canadian Trade Commissioner Service in China , (2022) <https://www.tradecommissioner.gc.ca/china-chine/ftz-zle.aspx?lang=eng>

<sup>35</sup> WEIGHTMAN, William, “*China’s Progress on Intellectual Property Rights*”, The Diplomat, (January 20, 2018) <https://thediplomat.com/2018/01/chinas-progress-on-intellectual-property-rights-yes-really/>

awards, and a perceived bias against foreign firms. However, in the last few years the Chinese government has shown great determination in the development and implementation of a solid system for IP protection which is embodied in the new “Patent Law of the People’s Republic of China”; the new law was approved by the PRC National Congress in 2020 and officially came into force on June 1, 2021. The new law, which is the fourth amendment of the Patent Law of the People’s Republic of China (1984) provides a clearer and stronger legal environment for IP Protection, able to assure companies and investors that China is becoming increasingly reliable and safe in terms of intellectual property protection.

Free Trade Zones have represented a vanguard in the field of IP protection even before the introduction of the amended version of the Patent Law in 2021. In Shanghai and Xiamen (Fujian) FTZs, an “Intellectual Property Office” in which all the issues regarding patents, trademarks and copyright are administered has been established to deal with IP claims, in lieu of claims brought before the AIC (Administration for Industry and Commerce). This IP Office is the first “three-in-one” administrative body in China, which embodies administrative and law-enforcement functions to deal with patent, trademark and copyright claims. This one-stop model consolidates the functions of several law-enforcing departments, simplifying the procedure and increasing the efficiency of anti-counterfeiting efforts<sup>36</sup>. These Intellectual Property offices have *de facto* substituted the law enforcement function of the AIC in these FTZs providing a high-quality service at a very competitive price.

The growing attention to IP protection in China can be attributed to the new strategic objectives set by the central government which particularly focus on technological development and independence; a solid IP protection system is therefore fundamental for companies that work high-tech fields to feel “protected” and decide to invest and operate in China.

### **2.3 Specialization of Free Trade Zones in China**

When a new FTZ is introduced in the Chinese territory, it is not built as a perfect replica of the already existing ones. According to the specific characteristics and needs of each region and area, each 自由贸易区 focuses on different industries and sectors, in line with the strategic objectives set by the central government.

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<sup>36</sup> “Enforcement of IP Rights in China’s Free Trade Zones”, Chang Tsi and Partners, (April 2017) <https://www.changtsi.com/news/updates/206.html>

Unfortunately, it is not easy to specifically understand why some regions focus on certain industries instead of others as the Overall Plans released by the government at the moment of the introduction of new FTZs are not very clear on this point.

It is nevertheless important to have a clear picture of what is the focus of each FTZ as it provides important information concerning the long-term economic aims and reference industries that the government wants to develop and focus on.

The “planned specialization” feature of Free Trade Zones offers several advantages; as in the case of industrial clusters, the geographical proximity of companies that work in the same industry might encourage profitable collaborations across firms, moreover these territories are also special not only because in these sites firms cluster together but also because a variety of other relevant actors (public and private institutions, universities, laboratories, government agencies, etc.) agglomerate and firms are enabled to specialize. What happened spontaneously and gradually in the first Special Economic Zones (E.g. Shenzhen and its specialization in the high-tech sector) is now a studied strategy to promote specialization and innovation in the new generation of Free Trade Zones.

The following list briefly explains what are the characteristics of the 21 existing FTZs operating on the Chinese territory as of September 2022.

### **Shanghai**

International financial center

- Financial services
- Advanced manufacturing
- Technical innovation
- Value-added telecom services

### **Guangdong**

Economic integration with Hong Kong and Macau

- Financial services
- Technology services
- Advanced manufacturing
- Science and education

### **Tianjin**

Offshore financial markets

- Aerospace and aviation
- Equipment manufacturing

- Cross border financing and leasing
- Information technology (IT)

### **Fujian**

Facilitation of trade with Taiwan

- Advanced manufacturing
- Financial services
- Tourism
- Aviation logistics

### **Chongqing**

Inland trade hub for BRI and Western Development

- Biotechnologies
- Financial services
- Advanced manufacturing
- E-commerce

### **Sichuan**

Coordination for the opening up of South West

- Trade related services
- Advanced manufacturing
- Medical services
- IT and tele-communications

### **Shaanxi**

Logistics and commerce hub for BRI

- Agriculture technology
- Advanced manufacturing
- Financial services
- E-commerce

### **Henan**

Modern traffic and logistics hub for BRI

- Automobiles and robotics
- Biomedicine
- Cross border e-commerce
- Financial services

### **Zhejiang**

Maritime commerce center and tech innovation hub

- Oil and petrochemicals
- E-commerce
- Intelligent manufacturing
- AI and fintech

### **Hubei**

High-tech hub for Yangtze River Economic Belt

- Financial services
- Advanced manufacturing
- Biomedicine
- New energy vehicles

### **Liaoning**

Logistics and shipping center in the northeast

- Advanced manufacturing
- Auto vehicles and components
- Cross border e-commerce
- IT and new technology

### **Hainan**

Strategy hub of 21st Century Maritime Silk Road

- Financial services
- Biomedicine and healthcare
- Clean energy
- Education

### **Jiangsu**

Pioneering zone for a real and open economy

- Financial services
- Advanced manufacturing
- Biomedical science
- Cross border e-commerce

### **Shandong**

Cooperation of trade with Japan and South Korea

- Marine industries
- Green-tech and biomedicine
- Financial services
- Advanced manufacturing

## **Hebei**

New-type industrial base and innovation platform

- Equipment manufacturing
- Life science and biotech
- Aviation and airport economy
- Financial leasing

## **Heilongjiang**

Cooperation hub with Russia and Northeast Asia

- Financial services
- High-end equipment
- Next generation IT
- Biomedicine

## **Guangxi**

International land and sea trade corridor for ASEAN

- Financial and digital services
- New manufacturing
- New-energy vehicle parts
- Biomedicine

## **Yunnan**

Opening-up frontier towards South Asian and Southeast Asian countries

- Advanced manufacturing
- Biomedicine and healthcare
- Cross-border e-commerce
- Headquarters economy

## **Beijing**

Development hub on digital innovation and service sector

- Financial services
- Fintech and digital trade
- Service trade innovation
- Biotechnology

## **Anhui**

Innovative pioneer of technology

- Advanced manufacturing
- Smart cars and appliances

- Financial services and fintech
- AI & robotics

## **Hunan**

Cooperation frontier of trade with Africa

- Advanced manufacturing
- Next generation IT
- Renewable energies and green tech
- Biomedicine and agritech

It is immediately clear that one of the main focuses of the government going forward is that of promoting technologically advanced sectors such as AI and robotics, next generation IT and advanced manufacturing. What should be noted is also a growing interest in environmentally sustainable fields such as renewable energies and green tech, in line with China’s commitment to improve its environmental performance in the following years and achieve carbon neutrality by 2060.

Finally, it is important to note how certain zones are used to promote the cooperation and incentivize trade with certain countries or areas; this is the case of Hunan which is a frontier of trade with Africa or Heilongjiang which is used as a cooperation hub with Russia and Northeast Asia.

## **2.4 From a Positive List to a Negative List Approach to Market Entry**

### **2.4.1 The Introduction of Negative Lists**

One of the major innovations brought forward by FTZs is the introduction of the so-called “Negative Lists” (负面清单, Fùmiàn qīngdān).

A Negative List is a list of sectors and industries that are closed (or partly limited) to foreign corporate investment and other activities; though it may appear as a great limitation to FDI, the introduction of a Negative List in China is an important element to help open the Chinese market to foreign investment and create a solid and clear legal framework for companies to operate in.

Before the implementation of a Negative List, the main approach to market access was that of a “Positive List”, in which examination and approval of foreign direct investment were required

beforehand<sup>37</sup>. What we can observe with the “Negative List” approach is therefore a substantial change in administering FDI, a complete reform of “the logic of the system” – from approval to filing – an important step towards decentralization and delegation of power<sup>38</sup>.

As Liu and Li report, from the rule of law perspective, the “negative list” approach connotes that in cases where the sovereign has prescribed no rule, the subject has the liberty to act, or forbear, according to his/ her discretion. This shift (from a positive list to a negative list) signals that the “absence of legal prohibition means freedom” in China’s governance mindset for the first time and represents a further step in promoting the rule of law by regulating public power and protecting private rights<sup>39</sup>.

China is not the only country to adopt this approach; since NAFTA firstly adopted the negative list in the foreign investment domain, the negative list model has been gradually accepted by more and more countries, especially developed ones. Several experts now believe that, in the future, this model will become a dominant one in the field of foreign investment regulation<sup>40</sup>.

The main advantage of using a Negative List approach to market access is the possibility of allowing foreign companies to enter the Chinese market with relative ease and quickness while at the same time allowing the government to protect new emerging industries, such as the service sector in China, that would otherwise face fierce competition from developed countries due to the lack of reservations<sup>41</sup>.

The first test bed for the introduction of such innovation was once again the Shanghai PFTZ.

As stated at point 2 of the “Circular of the State Council on the Framework Plan for the China (Shanghai) Pilot Free Trade Zone<sup>42</sup>:

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<sup>37</sup>CHEN, Chanting, “*The Negative List in China — Causation, Content and Implication*”, in Proceedings of the 2016 International Conference on Humanities and Social Science, (January 2016) <https://doi.org/10.2991/hss-26.2016.89>

<sup>38</sup> JAKUBCZAK, Jacek, “*China’s Foreign Investment Encouraged Catalogue and Negative Lists as a Tool of Foreign Direct Investment Attraction*”, *Annales Universitatis Mariae Curie-Skłodowska (Section H-Economics, Vol. 54, No. 2)*, (2020)  
<https://journals.umcs.pl/h/article/view/10061>

<sup>39</sup> LIU, Zuozhen and LI, Jiannan, “*The Rule of Law Experiment in China’s Pilot Free Trade Zones: The Problems and Prospects of Introducing Hong Kong Law into Guangdong*”, *International Journal of Law and Legal Jurisprudence Studies: ISSN:2348-8212 Volume 1 Issue 7 (9 May 2018)*

<sup>40</sup> “*Catalogue for the Guidance of Foreign Investment Industries*” (Amended in 2011), Ministry of Commerce of the People’s Republic of China, (February 2012)  
<http://english.mofcom.gov.cn/article/policyrelease/aaa/201203/20120308027837.shtml>

<sup>41</sup> “*Catalogue for the Guidance of Foreign Investment Industries*” (Amended in 2011), Ministry of Commerce of the People’s Republic of China, (February 2012)  
<http://english.mofcom.gov.cn/article/policyrelease/aaa/201203/20120308027837.shtml>

<sup>42</sup> Guówùyuàn guānyú yìnfā zhōngguó (shànghǎi) zìyóu màoyì shìyàn qū zǒngtǐ fāng'àn de tōngzhī, 国务院关于印发中国（上海）自由贸易试验区总体方案的通知, (Circular of the State Council on the Framework plan for the China (Shanghai) Pilot Free Trade Zone), Guo Fa 2013 No.38

上海市人民政府要精心组织好《方案》的实施工作。要探索建立投资准入前国民待遇和负面清单管理模式，深化行政审批制度改革，加快转变政府职能，全面提升事中、事后监管水平。

The Shanghai Municipal People's Government shall be responsible for the implementation of the Framework Plan. The China (Shanghai) Pilot Free Trade Zone shall explore the administration approach of National Treatment" on investment permission and "Negative List", deepen the reform of the administrative approval system, expedite the functional transformation of the Government, and enhance the follow-up supervision.

The first official Negative List for the Shanghai Pilot Free Trade Zone was introduced in 2013 (Negative List 2013<sup>43</sup>) and was mainly based on the "Catalogue for the Guidance of Foreign Investment Industries" (Catalogue 2011)<sup>44</sup> to group the national economy into 18 main sectors. These sectors were then subdivided into 1,069 subcategories. The list involved 190 special regulatory measures covering a wide range of activities out of the 1,069 subcategories.

The Shanghai 2013's Negative List<sup>45</sup> used the "reserved industries + special management measures" framework; if the foreign investment belonged to the reserved industries' category or needed special management measures, government approval was required, if otherwise, the investments were free from any restriction, the simple recording of the project satisfied the requirements<sup>46</sup>.

The introduction of a Negative List in the Shanghai Pilot Free Trade zone was such a huge step forward in opening up the Chinese market to FDI that Negative Lists were progressively introduced in the others FTZs and amended several times in the following years.

After accumulating more experience from the pilot practice of FTZs, the Chinese government succeeded in exploring how to achieve a unified negative list model for the nationwide application, which is the Special Administrative Measures (Negative List) for Foreign Investment Access (2018 Edition)<sup>47</sup>. There are currently two Negative Lists that investors

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<sup>43</sup> Special Administrative Measures (Negative List) on Foreign Investment Access to the China (Shanghai) Pilot Free Trade Zone (2013)

<https://scrip.pharmaintelligence.informa.com/-/media/pmbi-old-site/supportingdocuments/pharmasia-news/2013/december/negative-list.pdf>

<sup>44</sup> "Catalogue for the Guidance of Foreign Investment Industries" (Amended in 2011), Ministry of Commerce of the People's Republic of China, (February 2012)

<http://english.mofcom.gov.cn/article/policyrelease/aaa/201203/20120308027837.shtml>

<sup>45</sup> Wàishāng tóuzī zhǔn rù tèbié guǎnlǐ cuòshī, fùmiàn qīngdān, (2020 niánbǎn), 外商投资准入特别管理措施, 负面清单, (2020 年版), National Negative List 2020 edition

<https://www.ndrc.gov.cn/xxgk/zcfb/fzggwl/202006/P020200624549035288187.pdf>

<sup>46</sup> CHEN, "Rethinking local legislative power" (论地方立法权的再认识), China Legal Science (中国法学), (1996)

<http://rdbk1.ynlib.cn:6251/qw/Paper/28190>

<sup>47</sup> Wàishāng tóuzī zhǔn rù tèbié guǎnlǐ cuòshī, fùmiàn qīngdān, (2018 niánbǎn), 外商投资准入特别管理措施, 负面清单, (2018 年版), National Negative List 2018 edition <https://www.ndrc.gov.cn/xxgk/zcfb/fzggwl/201806/W020190905495140644002.pdf>

should pay attention to: a Negative List valid only for Pilot Free Trade Zones and one valid for the rest of the country.

Both lists are frequently modified (almost on an annual basis) and adapted to the current needs of the market but the number of limited or prohibited fields of investment is always reduced. The 2021 National Negative List has removed two restricted items from its 2020 counterpart, cutting it from 33 to 31, while the new 2021 FTZ Negative List removed three items, cutting it down to 27 from 30<sup>48</sup>, an astonishing cut if compared to the first Negative List applied in the Shanghai Free Trade Zone in 2013, which comprised of 190 items.

The introduction of a Negative List at a national level also finds its legitimacy in the new Foreign Investment Law of the People's Republic of China (中华人民共和国外商投资法实施条例-FIL). The new law concerning FDI in China was enacted in March 2019 to replace the 'three laws on foreign-invested enterprises': the Law of the PRC on Chinese-Foreign Equity Joint Ventures, the Law of the PRC on Chinese-Foreign Contractual Joint Ventures and the Law of the PRC on Wholly Foreign-Owned Enterprises.

Even though the introduction of a Negative List can be seen as a positive innovation brought by FTZs, many critical aspects are still relevant and need to be addressed to create a solid and reliable legal framework for foreign companies and investors to operate in.

#### **2.4.2 Issues Related to the Current Negative Lists for Foreign Investment**

As mentioned above, the introduction of a Negative List at a national level is a huge step forward in facilitating FDI in China; nevertheless, the current Negative Lists are far from perfect. Several critical issues are still relevant to this day and need to be addressed as soon as possible.

The paper "Current Situation and Improvement of China's Negative List System for Foreign Investment"<sup>49</sup> helps to better identify some of these problems and provides useful insights to rectify the situation.

The authors mainly divide the current problems of Negative Lists in China into four categories:

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<sup>48</sup> ZHANG, Zhou, "China's 2021 Negative Lists Widen Market Access for Foreign Investment", in China Briefing, (December 27, 2021) <https://www.china-briefing.com/news/2021-china-negative-lists-update-widen-market-access-for-foreign-investment/>

<sup>49</sup> CHEN, Rui KANG, Jianning, XIE, Yuxi and ZHOU, Yutong, "Current Situation and Improvement of China's Negative List System for Foreign Investment (From the Perspective of Comparative Law)", Proceedings of the 2021 4th International Conference on Humanities Education and Social Sciences (ICHESS 2021), (December 2021) <https://doi.org/10.2991/assehr.k.211220.081>

- Low transparency;
- Existing conflicts;
- Poor operability;
- Inadequate supporting system.

Both the Negative List 2020<sup>50</sup> and 2021<sup>51</sup> do not indicate their legal basis; without specifying this aspect the lists lack transparency around the regulations and certainty around the scope of regulations. This lack undermines foreign investors' ability to keep comprehensive and accurate information concerning the legal framework they operate in. This is an obvious violation of the WTO's principle of transparency, which means the law should be fully disclosed to the public for easier and more comprehensive access<sup>52</sup>.

The second issue concerns the conflict between applying the negative list for foreign investment access and existing Chinese law.

For example, Article 26 of the Negative List 2020/ Article 24 of the Negative List 2021 stipulates that investments in medical institutions shall be limited to joint ventures but, as the authors point out, this limitation is in direct conflict with a 2014 policy document. According to the "Notice on the Pilot Work of Establishing WHOLLY FOREIGN-OWNED Hospitals", issued by the National Health and Family Planning Commission and the Ministry of Commerce, medical institutions have taken the form of "sole proprietorship".

Both the Negative List 2021 and the "Notice on the Pilot Work of Establishing WHOLLY FOREIGN-OWNED Hospitals"<sup>53</sup> are policy documents and both are currently valid, leading to a conflict in existing law.

As the authors comment: "When there is a conflict between the negative list and existing laws or regulations, the logic of legal applications of the foreign investment system will be disordered if the lagging regulations are not explained or abolished in time. This will also lead to the decrease of certainty required by the negative list regulatory mode".

The third issue concerns poor operability.

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<sup>50</sup> Wàishāng tóuzī zhǔn rù tèbié guǎnlǐ cuòshī, fùmiàn qīngdān, (2020 niánbǎn), 外商投资准入特别管理措施, 负面清单, (2020 年版), National Negative List 2020 edition <https://www.ndrc.gov.cn/xxgk/zcfb/fzggwl/202006/P020200624549035288187.pdf>

<sup>51</sup> Wàishāng tóuzī zhǔn rù tèbié guǎnlǐ cuòshī, fùmiàn qīngdān, (2021 niánbǎn), 外商投资准入特别管理措施, 负面清单, (2021 年版), National Negative List 2021 edition <http://images.mofcom.gov.cn/www/202112/20211227175520952.pdf>

<sup>52</sup> NANYU, Li, "The Transparency Dilemma and Breakthrough of China's Negative List under the Implementation of Foreign Investment Law", Journal of the Party School of the CPC Nanjing Committee (2021) <https://kns.cnki.net/kcms/detail/detail.aspx?FileName=ZGNB202101012&DbName=CJFQ2021>.

<sup>53</sup> "Interpretation of the Notice on Establishing a Wholly Foreign-Owned Hospital", National Health's Commission of the People's Republic of China (2014) [http://en.nhc.gov.cn/2014-09/02/c\\_46610.htm](http://en.nhc.gov.cn/2014-09/02/c_46610.htm)

The categorization currently used in the Negative Lists is based on “The Industrial Classification for National Economic Activities and Codes” (GB/T 4754- 2017), which is the most authoritative national standard for classifying industries of China’s economy, while the vast majority of similar documents is based on the classification criteria provided by the WTO’s “Document on Services Sector Classification List” (MTN.GNS/W/120), which divides the services trade sector into 12 broad categories and 155 subsectors.

The different categorization system adopted by the Chinese Government differs greatly from world standards, leading to the weak operability of the Negative List, creating confusion and errors in the understanding of the Negative List.

The fourth issue is the inadequate supporting system surrounding the implementation of Negative Lists.

As seen in the previous paragraph, the Negative List approach to market entry finds its legitimacy in the new FIL (March 2019). The official introduction of Negative Lists in such an important Law is for sure a step forward in providing a solid legal base for the implementation of such a policy but it is not sufficient.

The Foreign Investment Law has only a few provisions on the supervision of foreign investment access, and the content is too broad, general and not very operable.

### **2.4.3 Final Thoughts on the Introduction of Negative Lists**

The introduction of a Negative List at a national level is one of the clearest examples of innovation experimented into the new generation of FTZs.

Although this relatively new instrument is not perfect and still presents several problematic aspects, its implementation is a clear step forward in creating a solid and clear legal framework for foreign companies to operate in; among the main positive implication of the new policy, it is important to underline the creation of a more open market and a more investor-friendly environment, the fundamental starting point that such experimentation provided for the construction of the new Foreign Investment Law and the decentralization of the administrative examination and approval authority that changed the role of government from the examiner to the administrator when it comes to the supervision of foreign investment projects.<sup>54</sup>

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<sup>54</sup> CHEN, Chanting, “*The Negative List in China — Causation, Content and Implication*”, in Proceedings of the 2016 International Conference on Humanities and Social Science, (January 2016) <https://doi.org/10.2991/hss-26.2016.89>

## **2.5 Progress in the Field of International Commercial Dispute Resolution System: Litigation, Arbitration, Mediation**

### **2.5.1 Introduction to the Concepts of Litigation, Arbitration and Mediation**

One of the main fields innovated thanks to FTZs in China, is that of international commercial dispute resolution mechanisms.

There are mainly three options to solve an international commercial dispute: litigation, arbitration and mediation.

As Donald C. Clarke<sup>55</sup> explains, Mediation involves a third party who attempts to bring the parties to a voluntary agreement. Neither party is required to accept any proposal of the mediator. Arbitration involves a third party, chosen by the disputants either before or after the dispute arises, whose decision is binding on the parties by prior agreement. In other words, whereas mediation involves voluntariness as to the outcome, arbitration involves voluntariness only as to the process. In litigation, neither the process nor the outcome can be rejected at the will of the parties; the court decides on its own whether it has the jurisdiction to decide the dispute and what the outcome will be.

The historical preference of Chinese people to solve any kind of dispute in a “harmonious” manner, without necessarily having to resort to litigation and lawsuits is well expressed by this ancient way of saying:

"It is better to die of starvation than to become a thief; it is better to be vexed to death than to bring a lawsuit."

This traditional tendency to avoid litigation has at least three sources: Confucian philosophy, the unavailability and inadequacy of relief in court, and a mutual security system that emphasized a societal structure consisting of small units<sup>56</sup>.

Mediation is therefore seen as a traditional and respected dispute resolution method even in modern China, while many foreign investors prefer to resort to arbitration which is a quicker and internationally well-reputed method of dispute resolution.

Statistics show that, among the foreign-related contracts signed by Chinese enterprises, more than 90% of the dispute settlement methods were arbitration. This strongly proves that international commercial arbitration is the preferred way of resolving cross-border disputes

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<sup>55</sup> CLARKE, Donald C., “*Dispute Resolution in China*”, Columbia Journal of Asian Law, 5(2), (1991) <https://doi.org/10.7916/cjal.v5i2.3118>

<sup>56</sup> UTTER, Robert F., “*Dispute Resolution in China*”, Washington Law Review ( Volume 62, Number 3), (1987) <https://digitalcommons.law.uw.edu/wlr/vol62/iss3/6>

between Chinese and foreign parties, compared with lawsuits before national courts. Arbitration enjoys several advantages over traditional litigation, and the most notable one is the enforceability of foreign arbitral awards in member countries of the “1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards” (the New York Convention), to which China is a member State<sup>57</sup>.

The implementation of the Belt and Road Initiative (BRI) has strongly highlighted the need to update the alternative dispute resolution system in China<sup>58</sup>, to make it more credible and reliable in the eyes of foreign investors. Moreover, along with the in-depth promotion of the FTZ strategy, international commercial disputes are not only increasing in number and type but also in difficulty of dispute resolution. Therefore, the establishment and improvement of an advanced dispute resolution mechanism in the FTZ are crucial to the long-term and healthy development of the FTZ<sup>59</sup>.

For many years, China lagged in terms of legal education and the country is now trying to catch up with modern legal standards to create a solid and trustworthy legal framework able to convince investors that China is now a fully developed superpower in which to invest capital and resources.

The new generation of Free Trade Zones have once again played the role of testing grounds for innovative policies in the field of international commercial dispute resolution and have helped create a more modern and solid legal environment for foreign companies that operate in China.

### **2.5.2 Alternative Dispute Resolution in the Shanghai FTZ:**

A very interesting case study to better understand how FTZs have played an important role in the innovation of dispute resolution mechanisms in China is that of the Shanghai FTZ.

The Shanghai International Arbitration Center (SHIAC)<sup>60</sup> established the China (Shanghai) Pilot Free Trade Zone Court of Arbitration in October 2013, to provide consultation, case filing, arbitral hearings, and other services in the Shanghai FTZ.

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<sup>57</sup> “*Convention on the Recognition and Enforcement of Foreign Arbitral Awards*”, UNCITRAL (1958)

<https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/new-york-convention-e.pdf>

<sup>58</sup> “*China’s Belt and Road Initiative in the Global Trade: Investment and Financial Landscape*”, Business and Financial Outlook 2018 (OECD), (2018)

<https://www.oecd.org/finance/Chinas-Belt-and-Road-Initiative-in-the-global-trade-investment-and-finance-landscape.pdf>

<sup>59</sup> “*Foreign Administered Arbitration in China: The Emergence of a Framework Plan for the Shanghai Pilot Free Trade Zone*”, Kluwer Arbitration Blog, (September 6, 2019)

<http://arbitrationblog.kluwerarbitration.com/2019/09/06/foreign-administered-arbitration-in-china-the-emergence-of-a-framework-plan-for-the-shanghai-pilot-free-trade-zone/>

<sup>60</sup> Shanghai International Arbitration Centre Official Website (上海国际仲裁中心)

[http://www.shiac.org/shiac/index\\_E.aspx](http://www.shiac.org/shiac/index_E.aspx)

In May 2014, the SHIAC released the “China (Shanghai) Pilot Free Trade Zone Arbitration Rules”<sup>61</sup> also known as the FTZ Arbitration Rules. These Arbitration Rules introduced the most advanced arbitration theory and practice at the time; a great step forward from the China’s Arbitration Law, which restricted the development of domestic arbitration rules and practice and ultimately led to the country lagging behind modern practice.

According to the Asia-Pacific Arbitration Review 2021<sup>62</sup>, these innovative rules not only became the reference point for amendment of the arbitration rules of other domestic arbitration institutions from 2014 to 2016 but also received great attention from further afield.

According to the Circular on “Issuing the Plan for Comprehensive Deepening the Reform and Opening-up of China (Shanghai) Pilot Free Trade Zone” released on April 20, 2015, by the State Council, the further improvement of arbitration rules and the transformation of Shanghai into a “globally oriented” arbitration center are clearly stated objectives.

The advancements in arbitration proposed by the FTZ Arbitration Rules were appreciated and supported by several institutions. The UNCITRAL Regional Centre for Asia and the Pacific praised the rules for innovation and inspiring regional arbitration reforms, while on May 4 2014, the Shanghai No. 2 Intermediate People’s Court promulgated its “Opinions on Judicial Review and Enforcement of Arbitration Case Applying the China (Shanghai) Pilot Free Trade Zone Arbitration Rules”<sup>63</sup>. The opinions provided strong judicial support for the implementation of the arbitration rules of the Shanghai PFTZ.

Among the most innovative aspects of the FTZ Arbitration Rules it is important to mention:

- The possibility for disputing parties to appoint arbitrators from outside the panel;

**Article 27** Appointment of Arbitrator(s)<sup>64</sup>

1. Parties may appoint arbitrators from the Panel of Arbitrators.

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<sup>61</sup> The China (Shanghai) Pilot Free Trade Zone Arbitration Rules (2014 version) [http://www.shiac.org/upload\\_files/file/2016/20160228222009\\_1179.pdf](http://www.shiac.org/upload_files/file/2016/20160228222009_1179.pdf)

<sup>62</sup> “Arbitration in mainland China’s free trade zones aiming to match international standards”, The Asia-Pacific Arbitration Review 2021

<https://globalarbitrationreview.com/review/the-asia-pacific-arbitration-review/2021#:~:text=Across%2017%20chapters%20and%20112,with%20footnotes%20and%20relevant%20statistics>.

<sup>63</sup> Shànghǎi shì dì èr zhōngjí rénmin fǎyuàn guānyú shìyòng zhōngguó (Shànghǎi) zìyóu mào yì shìyàn qū zhōngcái guīzé zhōngcái ànjiàn sīfǎ shēnchá hé zhíxíng de ruògān yìjiàn” jiědú, 上海市第二中级人民法院关于适用仲裁案件司法审查和执行的若干意见解读, The Second Intermediate People’s Court of Shanghai Municipality on the Application of the Arbitration Rules of the China (Shanghai) Pilot Free Trade Zone- Interpretation of Several Opinions on Judicial Review and Enforcement of Arbitration Cases

[http://www.shiac.org/upload\\_files/file/2016/20160227080657\\_4924.pdf](http://www.shiac.org/upload_files/file/2016/20160227080657_4924.pdf)

<sup>64</sup> “The China (Shanghai) Pilot Free Trade Zone Arbitration Rules”, (article 27, page 22) (2014 version) [http://www.shiac.org/upload\\_files/file/2016/20160228222009\\_1179.pdf](http://www.shiac.org/upload_files/file/2016/20160228222009_1179.pdf)

2. Any party may recommend person(s) from outside the Panel of Arbitrators as the arbitrator. Parties may also reach an agreement on jointly recommending a person from outside the Panel of Arbitrators as the presiding/sole arbitrator

- The introduction of an emergency arbitration system through which interim measures may be processed by an emergency tribunal.

**Article 21** Emergency Tribunal<sup>65</sup>

1. Any party may, who intends to apply for interim measure(s) during the period between the acceptance of a case and the constitution of the tribunal, apply for an emergency tribunal, by submitting a written application and reasons therefore, in accordance with the laws in the jurisdiction where the interim measure(s) is sought. SHIAC shall decide whether to constitute an emergency tribunal.

Another milestone in reforming dispute resolution mechanisms in China is the publishing of the “Overall Plan for Lingang Special Area of China (Shanghai) PFTZ”<sup>66</sup> in 2019, which stipulates that well-known overseas arbitral and dispute resolution institutions have the right to establish business divisions in the area.

Later on, the “Administrative Measures for Business Offices Established by Overseas Arbitration Institutions in the Lingang Special Area of China (Shanghai) FTZ” were published; the Measures provide a clear framework of rules for the establishment of business divisions of Overseas Institutions.

The foreign business division may conduct foreign-related arbitration business concerning civil and commercial disputes arising in international commerce, maritime, investment and other fields. More specifically, it may provide arbitral services including acceptance, trial, hearing and awarding of cases, case management and services, and business consultation, guidance, training and discussion. It should be noted that the foreign business division is not allowed to engage in the arbitration of cases with no foreign elements or further establish any branch or representative office.

A similar approach to arbitration was recently introduced by the Beijing Municipality as well. On 28 August 2020, the State Council published the “Plan for Deepening the Comprehensive Pilot Program of a New Round of Expanding Opening-up of the Service Sector in Beijing Municipality and Building a National Comprehensive Demonstration Zone for Expanding

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<sup>65</sup> “*The China (Shanghai) Pilot Free Trade Zone Arbitration Rules*”, (article 21, page 18) (2014 version) [http://www.shiac.org/upload\\_files/file/2016/20160228222009\\_1179.pdf](http://www.shiac.org/upload_files/file/2016/20160228222009_1179.pdf)

<sup>66</sup> Guówùyuàn guānyú yìn fā zhōngguó (shànghǎi) zìyóu mào yì shì yàn qū (lín gǎng xīn piàn qū zǒng tǐ fāng'àn de tōng zhī), 国务院关于印发中国（上海）自由贸易试验区（临港新片区总体方案的通知), Circular of the State Council on Issuing the China (Shanghai) Pilot Free Trade Zone (Overall Plan for Lingang New Area), 国发〔2019〕15号, Guofa [2019] No. 15 [http://www.gov.cn/zhengce/content/2019-08/06/content\\_5419154.htm](http://www.gov.cn/zhengce/content/2019-08/06/content_5419154.htm)

Opening-up of the Service Sector”<sup>67</sup>. The plan is clearly based on the policies experimented in the Lingang area and includes the following passage:

“Well-known overseas arbitral and dispute resolution institutions shall be allowed to establish business divisions in specific areas of Beijing, as registered with the justice department of the People's Government of Beijing Municipality and filed with the justice department of the State Council, to provide arbitration services with respect to civil and commercial disputes arising in international commerce, investment and other fields, so as to legally support and guarantee Chinese and foreign parties' application for and enforcement of interim measures such as property preservation, evidence preservation and conduct preservation before and during the arbitration.”

Arbitration is not the only dispute resolution method that was improved thanks to FTZs.

As Liu and Li report<sup>68</sup>, to enhance the alternative dispute resolution (ADR) mechanisms in the Shanghai PFTZ, the authorities prioritize mediation as a mean to resolve disputes between parties in conflict. On June 24, 2015, the administration of the zone and 38 industrial associations and companies agreed to use the Shanghai Commercial Mediation Centre's mediation services in case of a dispute. The Shanghai Commercial Mediation Centre also signed a cooperation agreement with the Shanghai No. 1 Intermediate Court on the construction of an ADR mechanism in the Shanghai PFTZ. The tribunal for the Shanghai PFTZ provides flexible mediation procedures to the disputing parties, and the parties are allowed to choose to resolve the dispute through mediation before or during the litigation.

### **2.5.3 Alternative Dispute Resolution in the Guangdong FTZ:**

Some interesting developments concerning alternative dispute resolution can also be observed in the Guangdong FTZ.

The first steps in developing a more advanced and open arbitration system can be traced back even before the formal establishment of the Guangdong FTZ; On October 23, 2012, the “Nansha International Arbitration Center” was inaugurated in Nansha District, Guangzhou.

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<sup>67</sup> Guó hán (2020) 123 hào “guówùyuàn guānyú shēnhuà běijīng shì xīn yī lún fúwù yè kuòdà kāifàng zònghé shidiǎn jiànshè guójiā fúwù yè kuòdà kāifàng zònghé shifàn qū gōngzuò fāng'àn de pīfù”, 国函 (2020) 123 号《国务院关于深化北京市新一轮服务业扩大开放综合试点建设国家服务业扩大开放综合示范区工作方案的批复》, Guohan [2020] No. 123 "The State Council's Reply to the Work Plan for Deepening the New Round of Comprehensive Pilots for the Expanding and Opening up of the Service Industry in Beijing and Building a National Comprehensive Demonstration Zone for the Expanding and Opening of the Service Industry, Beijing Municipal People's Government and Ministry of Commerce, (2020) <https://www.waizi.org.cn/doc/91618.html>

<sup>68</sup> LIU, Zuozen and LI, Jiannan, “*The Rule of Law Experiment in China's Pilot Free Trade Zones: The Problems and Prospects of Introducing Hong Kong Law into Guangdong*”, *International Journal of Law and Legal Jurisprudence Studies* (Volume 1, Issue 7), (9 May 2018) DOI:10.1007/s40803-018-0076-3

According to the “World Trade Center” Macau Arbitration Center<sup>69</sup>, the “Nansha International Arbitration Center” provides a virtual platform for cooperation and development of arbitrations in Guangdong, Hong Kong and Macao and encourages the utilization of the “Nansha International Arbitration Center” as a platform to promote the arbitration systems to the related government officials, legal and economic professionals in these regions. It is believed that with the advantages of the arbitration system in these three regions, commercial disputes can be solved according to law and in a fair, impartial, and timely manner, and cooperation within the three regions could be safeguarded by arbitral protection.

As Li and Liu report<sup>70</sup>, the joint venture arbitration center employs as arbitrators many Hong Kong citizens with expertise in commerce, finance, IT, and shipping. Parties to arbitrations conducted by the “Nansha International Arbitration Center” may choose Hong Kong or Macau arbitration rules to govern their arbitrations, and they may choose to conduct their arbitrations in Cantonese or other languages.

Another important element of innovation in the Guangdong FTZ is the “Shenzhen International Arbitration Institute” (SIAI); the institute has adopted a management model centered on a board of directors to achieve the independence of the arbitration institution and the arbitral tribunal, changing the status quo of Chinese arbitration institutions, which have always been administrative in nature with the government as the background<sup>71</sup>.

The 2019 version<sup>72</sup> of the “Arbitration Rules for SCIA” are quite innovative and introduced for the first time the possibility of an optional repeat arbitration procedure, to meet the need of parties that would like to have a second opportunity to arbitrate their substantive issues. As Tao and Zhong report<sup>73</sup>, this innovative option may run against the value of efficiency, an inherent feature of arbitration, but indeed, it could meet some parties’ desire for ultimate justice, especially those who have extremely high stakes in the disputes.

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<sup>69</sup> “Nansha International Arbitration Center Inaugurated”, World Trade Center Macau Arbitration Center (2012) <http://www.wtc-macau.com/arbitration/eng/events/19.htm>

<sup>70</sup> Opinions on the Provision of Judicial Safeguards for the Construction of Pilot Free Trade Zones, Fafa [2016] No. 34, Supreme People’s Court, (2016) <https://cicc.court.gov.cn/html/1/219/199/411/807.html>

<sup>71</sup> TANG, Zihui, “Study of China’s Arbitration System Based on a Review of International FTA Arbitration Mechanisms”, *Advances in Social Science, Education and Humanities Research* (Volume 631), (2021) <https://www.atlantis-press.com/proceedings/sdmc-21/125968562>

<sup>72</sup> “SCIA Arbitration Rules” (2019 version) [http://www.scia.com.cn/files/fckFile/file/SCIA%20Arbitration%20Rules%20\(effective%20from%20Feb\\_%202021,%202019\).pdf](http://www.scia.com.cn/files/fckFile/file/SCIA%20Arbitration%20Rules%20(effective%20from%20Feb_%202021,%202019).pdf)

<sup>73</sup> TAO, Jingzhou and ZHONG, Mariana, “Resolving Disputes in China: New and Sometimes Unpredictable Developments”, *International Organizations and the Promotion of Effective Dispute Resolution: AIIB Yearbook of International Law*, (2019) [https://www.jstor.org/stable/10.1163/j.ctvrk3sj.7#metadata\\_info\\_tab\\_contents](https://www.jstor.org/stable/10.1163/j.ctvrk3sj.7#metadata_info_tab_contents)

The Guangdong FTZ has also been the test bed for the “limited introduction” of ad hoc arbitrations.

China’s Arbitration Law constitutes a clear limitation to the introduction of such practice but FTZs are starting to experiment with this type of arbitration, nevertheless.

Article 16 and 18 of China’s Arbitration Law<sup>74</sup> state that:

**Article 16**

An arbitration agreement shall include arbitration clauses stipulated in the contract and agreements of submission to arbitration that are concluded in other written forms before or after disputes arise.

An arbitration agreement shall contain the following particulars:

- (1) an expression of intention to apply for arbitration;
- (2) matters for arbitration; and
- (3) a designated arbitration commission.

**Article 18**

If an arbitration agreement contains no or unclear provisions concerning the matters for arbitration or the arbitration commission, the parties may reach a supplementary agreement. If no such supplementary agreement can be reached, the arbitration agreement shall be null and void.

These provisions implicitly prohibit ad hoc arbitrations by affirming that only arbitration agreements designating qualified arbitration institutions or commissions are valid in mainland China. Many academics have explained that arbitration was a completely new mechanism for the resolution of disputes when China’s Arbitration Law was promulgated and that China does not have a tradition of arbitration or the experience to support effective ad hoc arbitral proceedings. To guarantee fairness and justice in arbitration, therefore, it was deemed more appropriate to restrain arbitral jurisdiction to competent arbitration institutions<sup>75</sup>.

A major step forward in allowing ad hoc arbitrations was the publication of the “Opinions on the Provision of Judicial Safeguards for the Construction of Pilot Free Trade Zones” (The Opinions)<sup>76</sup> in 2016.

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<sup>74</sup> “*Arbitration Law of the People’s Republic of China*”, Order No.31 of the President of the People’s Republic of China, (August 31, 1994)  
[http://www.npc.gov.cn/zgrdw/englishnpc/Law/2007-12/12/content\\_1383756.htm](http://www.npc.gov.cn/zgrdw/englishnpc/Law/2007-12/12/content_1383756.htm)

<sup>75</sup> CHEN, Meng, “*Opening a Window for Chinese Ad Hoc Arbitration*”, *Arbitration Law Review* (Volume 10, Issue 1), (2018)  
<https://elibrary.law.psu.edu/cgi/viewcontent.cgi?article=1242&context=arbitrationlawreview>

<sup>76</sup> Opinions on the Provision of Judicial Safeguards for the Construction of Pilot Free Trade Zones, Fafa [2016] No. 34, Supreme People’s Court, (2016)  
<https://cicc.court.gov.cn/html/1/219/199/411/807.html>

Article 9 of The Opinions states that:

In case companies registered within the Pilot Free-Trade Zones agree to arbitration in certain locations in Mainland China, with certain arbitration rules, and by certain persons, such arbitration agreement *may* be recognized as valid. In case a people's court finds such arbitration agreement to be invalid, it shall report the matter to a higher court for review. In case the higher court agrees with the lower court, it shall further report the matter to the SPC and shall only decide on the matter upon the SPC's reply.

The above rule can be read to the effect that ad hoc arbitration agreements are valid if:

1. Both the parties are registered in a Free Trade Zone.
2. The agreement provides for a specific place in Chinese mainland, specific arbitration rules, and specific arbitrators.

As Tao and Zhong<sup>77</sup> comment, a reasonable interpretation is that, even where these vague conditions are present, the Chinese courts still enjoy the discretion to decide on the validity of such ad hoc arbitration agreement because, as stated in the clause, “the arbitration agreement *may* be recognized as valid..”.

In this new context of openness towards ad hoc arbitration, the Zhuhai Arbitration Commission formulated the “Ad Hoc Arbitration Rules of the Hengqin Free Trade Zone”<sup>78</sup> (2017), marking the official arrival of ad hoc arbitration in mainland China.

It is of course an encouraging signal for ad hoc arbitration to make its debut in China, despite being limited in scope. In practice, there are still many issues that need to be tackled in relation to ad hoc arbitrations in China.

#### **2.5.4 Final Thoughts on ADR Mechanisms in FTZs**

Thanks to its flexibility, confidentiality, neutrality and professionalism, arbitration is by far the most used method to solve international commercial disputes.

As Tang<sup>79</sup> comments, the establishment and improvement of advanced dispute resolution mechanisms in FTZs are crucial to the long-term and healthy development of FTZs in China.

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<sup>77</sup> TAO, Jingzhou and ZHONG, Mariana, “*Resolving Disputes in China: New and Sometimes Unpredictable Developments*”, International Organizations and the Promotion of Effective Dispute Resolution: AIIB Yearbook of International Law, (2019)

[https://www.jstor.org/stable/10.1163/j.ctvrk3sj.7#metadata\\_info\\_tab\\_contents](https://www.jstor.org/stable/10.1163/j.ctvrk3sj.7#metadata_info_tab_contents)

<sup>78</sup> 横琴自由贸易试验区临时仲裁规则, Heng qin ziyóu màoyì shìyàn qū línshí zhòngcái guīzé, Hengqin Pilot Free Trade Zone Provisional Arbitration Rules, (2017)

<http://zcia.pro/info/693.html>

<sup>79</sup> TANG, Zihui, “*Study of China's Arbitration System Based on a Review of International FTA Arbitration Mechanisms*”, Advances in Social Science, Education and Humanities Research (Volume 631), (2021)

<https://www.atlantis-press.com/proceedings/sdmc-21/125968562>

The arbitration system in China's FTZs is an important part of the rule of law construction and has a positive impact on the construction and general development of FTZs. However, China's general commercial arbitration system can hardly meet the requirements of internationalization, specialization, and facilitation of the arbitration system in FTZs due to its own limitations, so it is necessary to build an arbitration system specifically serving the FTZ.

Among the most important issues that still limit arbitration in China's FTZs, it is important to note:

- Uneven Coverage of Specialized Arbitration Institutions: As the number of enterprises in the FTZ is rapidly increasing and the speed of commercial disputes is expected to rise, it is important to ensure that professional arbitration institutions are located and operating in as many FTZs as possible to facilitate the quick resolution of disputes and mitigate the commercial impact on enterprises and investors in the FTZs.
- Imperfect laws and regulations on arbitration in FTZs: Lack of legislation at the national level, Weak operability and unclear legal characterization of the General Scheme of FTZs, complex local legislation.
- Low Supply of Arbitration Rules and Judicial Review Rules in FTZs: The current situation of imperfect laws and regulations and the lack of arbitration rules and judicial review rules is not conducive to the efficient, flexible, and convenient resolution of commercial disputes in the zone.

FTZs have played and still play a relevant role in the creation of a more open and advanced dispute resolution system in China but there is still much to be experimented with and adjourned to create an ADR system that is up to date with modern international standards.

## **2.6 Final Remarks on the New Generation of Free Trade Zones**

Through the introduction of the new generation of FTZs or 自由贸易区 China has been able to promote innovation in several, important fields, creating a more solid legal environment for foreign companies to operate in.

The introduction at a national level of Negative Lists and pre-establishment national treatment for foreign companies are just a few examples of how the “point-to-surface” approach of the Chinese government proved once again to be successful.

Moreover, the important results that FTZs were able to achieve in the field of alternative dispute resolution, particularly as it concerns arbitration, is an important step towards the implementation of the rule of law in the country and in more immediate terms allows foreign companies to feel safer and incentivized to invest in the PRC.

From the economic point of view, according to the Chinese Ministry of Commerce, in 2021, China's 21 FTZs contributed 17.3% of China's total foreign trade (Rmb 6.8 tln) and 18.5% of China's foreign investment inflows (Rmb 213 bln)<sup>80</sup>, an extremely significant result.

As China pivots away from export-manufacturing to a Dual Circulation strategy focused on domestic demand and technological self-sufficiency, FTZs are once again leading the way<sup>81</sup>.

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<sup>80</sup> "Free Trade Zones in China", The Canadian Trade Commissioner Service in China , (2022)  
<https://www.tradecommissioner.gc.ca/china-chine/ftz-zle.aspx?lang=eng>

<sup>81</sup> HENDERSON, Joshua, "China's New Free Trade Zones: A Pivot Inward?", Center for Strategic and International Studies (CSIS), October 2020  
[https://www.csis.org/blogs/new-perspectives-asia/chinas-new-free-trade-zones-pivot-inward#:~:text=Through%20the%20first%20seven%20months,16.8%20percent%20of%20China's%20total\).](https://www.csis.org/blogs/new-perspectives-asia/chinas-new-free-trade-zones-pivot-inward#:~:text=Through%20the%20first%20seven%20months,16.8%20percent%20of%20China's%20total).)

## CHAPTER 3

# Talent Attraction Policies in China's Free Trade Zones

### 3.1 The Changing Nature of Work and the Rise of Knowledge Workers

#### 3.1.1 Introduction

As explained in Chapter 1, in the last few years China tried to change its strategic objectives, focusing on new goals such as tackling inequality, expanding the extent of the domestic market and focusing funds and attention on environmentally sustainable fields and high tech.

The objective of technological independence or at least technological self-sufficiency is not an easy one to reach and it will probably require a significant amount of funds and time but also of human capital.

As already reported at the end of Chapter 1, it has been pointed out that<sup>1</sup>:

Human capital underpins much of the technological progress in the semiconductor industry. Chinese policymakers should understand that money alone cannot create innovation and talent overnight. A shortage of domestic talent remains a critical bottleneck in China's technological catch-up.

The same concept is true for almost all, if not all, high-tech fields and industries.

In the past, many have tried to explain how innovation is brought about and how governments can incentivize this process to be at the forefront of technological innovation, achieve incredible results in terms of economic growth and improve the general quality of life of the population. These concepts (economic growth, innovation and improved quality of life) are all linked to one another; the main problem and topic of discussion is “*how*” they are linked and which one is the starting point to achieve the others.

After World War II, macroeconomics models (e.g. the Solow Model) hypothesized that the starting point had to be that of economic growth; economic growth would then bring innovation and innovation would eventually result in improved quality of life.

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<sup>1</sup>TO, Yvette, “*Rethinking China's Strategy of Technological Independence*”, Georgetown Journal of International Affairs, (June 2021)  
<https://gjia.georgetown.edu/2021/06/22/rethinking-chinas-strategy-of-technological-independence/>

Sometime later, endogenous theories, starting from the Solow Model, reversed the first two points and established that, according to their view, innovation had necessarily to come before economic growth and constituted its premise.

Nowadays many scholars tend to have a different view on the topic and put at the core of the matter human development or, in simple words, people. They believe that human development should be considered the starting point as innovation ultimately rests “*within*” human beings. Knowledge is therefore the key element to achieving technological innovation and everything that comes with it.

From this premise, it is possible to understand how, in this modern context, being able to attract talent is a fundamental element for not only companies and businesses but more in general for governments and countries.

This chapter will focus on the topic of talent attraction policies, why they are necessary and what policies have been implemented in Free Trade Zones to attract the talent necessary to achieve technological development.

In order to analyze these aspects, it is first of all necessary to briefly analyze how labor changed in the last decades and how this change affected labor management.

### **3.1.2 How Work Changed: A New Generation of Workers**

In his paper for Fondazione Agnelli, Sebastiano Bagnara<sup>2</sup> provides an interesting excursus of how the nature of work changed in the last decades and how these changes influenced the labor market and its composition.

He affirms that, by looking at the data available and several papers and studies, starting from the 1990s, what we can observe is a technological and social transformation that would have eventually changed the nature of work itself.

At the end of the last century in the US<sup>3</sup>, workers in agriculture, forestry and fishing represented a very small minority (0.7%). Workmen still represented an important social group (25%), but far from the size that they had reached in the 1950s when they represented almost 40% of the total amount of workers in the US. Service workers maintained the relative majority (41.6%), but had been decreasing since 1980 when they reached their peak percentage (46.2%). The most

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<sup>2</sup> BAGNARA, Sebastiano, “*Lavoro e Sistemi Formativi nella Società della Conoscenza*”, Giovanni Agnelli Foundation, Education FGA Program (Working Paper n.31), (2010)  
[https://www.fondazioneagnelli.it/wpcontent/uploads/2017/05/S\\_\\_Bagnara\\_Lavoro\\_e\\_sistemi\\_formativi\\_nella\\_societa\\_della\\_conoscenza\\_-\\_FGA\\_WP31.pdf](https://www.fondazioneagnelli.it/wpcontent/uploads/2017/05/S__Bagnara_Lavoro_e_sistemi_formativi_nella_societa_della_conoscenza_-_FGA_WP31.pdf)

<sup>3</sup> “*USA Census 2000 – Brief: Occupations*”, United States Census Bureau, (2000)  
<https://www2.census.gov/library/publications/decennial/2000/briefs/c2kbr-25.pdf>

interesting change was the rapid growth of a new social group, that of “knowledge workers”; this group had represented a minority for half a century (more or less 10%) and was then starting to emerge and grow at an astonishingly rapid pace.

The group of so-called “knowledge workers” continued to grow steadily in the last decades all around the world and now represents the majority of the total workforce in many countries, including the US and European countries. It is estimated that there are more than 1 billion knowledge workers globally<sup>4</sup>.

But who are these workers and why did they emerge starting from the 1990s?

The term “knowledge worker” was first introduced by Peter Drucker in his book “The Landmarks of Tomorrow”<sup>5</sup> in 1959, well before the “official” rise of this category in the 1990s. Drucker predicted that these workers would eventually become a fundamental part of the working force in the 21<sup>st</sup> and them as workers whose main capital is knowledge; they are high-level workers who apply theoretical and analytical knowledge, acquired through formal training, to develop products and services<sup>6</sup>.

As Bagnara reports<sup>7</sup>, these professionals mainly operate in the fields of research, education, finance, management, information technology, engineering and architecture, art, design, entertainment and communication. All these professions have two characteristics in common: they do not produce or exchange physical products, but information and ideas; therefore the value of the services is determined only marginally by the time involved in doing them, but rather by the degree of innovation and the quality of the ideas they produce.

In conclusion, the main idea is that we observed a shift in the labor market, which was previously dominated by industrial workers, then by workers operating in different fields in the service industry and now by this new category, whose strong features are knowledge and resilience.

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<sup>4</sup> CASTLE, Scott, “*Who Are Knowledge Workers and How Do We Enable Them?*”, Forbes, (December 1, 2021) <https://www.forbes.com/sites/sisense/2021/12/01/who-are-knowledge-workers-and-how-do-we-enable-them/?sh=62f1a2c76018>

<sup>5</sup> DRUCKER, Peter, “*The Landmarks of Tomorrow*”, Heineman, (1959) <https://archive.org/details/landmarksoftomor00druc0/mode/2up>

<sup>6</sup> CFI team, “*Knowledge Workers*”, Corporate Finance Institute, (October 28, 2021) <https://corporatefinanceinstitute.com/resources/knowledge/other/knowledge-workers/>

<sup>7</sup> BAGNARA, Sebastiano, “*Lavoro e Sistemi Formativi nella Società della Conoscenza*”, Giovanni Agnelli Foundation, Education FGA Program (Working Paper n.31), (2010) [https://www.fondazioneagnelli.it/wpcontent/uploads/2017/05/S\\_\\_Bagnara\\_Lavoro\\_e\\_sistemi\\_formativi\\_nella\\_sociaeta\\_della\\_conoscenza\\_-\\_FGA\\_WP31.pdf](https://www.fondazioneagnelli.it/wpcontent/uploads/2017/05/S__Bagnara_Lavoro_e_sistemi_formativi_nella_sociaeta_della_conoscenza_-_FGA_WP31.pdf)

This shift did not occur by accident in the 1990s but was driven by the technological revolution brought by the spread of information and communication technologies at a global level and then drastically accentuated by the creation of “the internet”.

### **3.1.3 The Features of Knowledge Workers and What They Need to Operate Efficiently**

In the previous paragraph a general definition of “knowledge workers” was provided but who are in reality knowledge workers and what are the main feature of this category?

To answer this question, we first have to look at the main features that characterize this new reality of work, that is to say, the “knowledge work”.

Bagnara<sup>8</sup> synthetizes its characteristics as follows:

- The work is demographically heterogeneous: the composition of the workforce is more and more varied in terms of sex, ethnic background, educational background and social status. Immigration is only one aspect of the ongoing demographic reshuffling, therefore the ability to adapt to a multicultural environment becomes fundamental.
- The work is fluid: there are no longer strictly defined boundaries between the various occupations inside the corporate structure; many workers operate in different fields at the same time and frequently change jobs and mansions.
- The work is varied: organizations use a wide variety of specific skills to achieve their goals, creating a wide range of different ways in which the same work can be organized. This transformation requires the development of competence in reading different contexts.
- The work is socially and emotionally challenging: there is great horizontal and vertical flexibility: a knowledge worker can be engaged, on the same day and in parallel, on several projects, in which he fills different roles. It is therefore necessary to be able to understand and manage social interactions and relationships for negotiation and cooperation. It is essential to know how to manage conflicts and emotions effectively and consistently.
- The work is cognitively challenging and requires high levels of responsibility: this new type of work leaves ample margins of autonomy to workers, even in very uncertain and

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<sup>8</sup> BAGNARA, Sebastiano, “*Lavoro e Sistemi Formativi nella Società della Conoscenza*”, Giovanni Agnelli Foundation, Education FGA Program (Working Paper n.31), (2010)  
[https://www.fondazioneagnelli.it/wpcontent/uploads/2017/05/S\\_\\_Bagnara\\_Lavoro\\_e\\_sistemi\\_formativi\\_nella\\_societa\\_della\\_conoscenza\\_-\\_FGA\\_WP31.pdf](https://www.fondazioneagnelli.it/wpcontent/uploads/2017/05/S__Bagnara_Lavoro_e_sistemi_formativi_nella_societa_della_conoscenza_-_FGA_WP31.pdf)

variable contexts; it is therefore necessary to develop cognitive skills and competencies of analysis, diagnosis, planning and decision making. Above all, a great ability to manage sudden changes in the mental workload is needed.

- The work requires a collaborative spirit: to solve problems in this ever-changing reality, it is necessary to collectively analyze the state of things, address problems from different points of view and negotiate the actions to be taken. It is therefore necessary to know how to collaborate and how to quickly build trust to make collaboration effective and reliable.
- The work is intense in terms of working hours: we work longer and harder because the structure of the work is motivating and challenging, nevertheless, it never ends. Work enters our life and it becomes more and more challenging to be able to define clear borders between personal and work life. The ability to cope with stress and anxiety is fundamental.
- The work requires “vision”: the strong interdependence between changes in the market, demographics, technologies, specializations, human resources policy and organizational systems requires the ability to develop scenarios that allow the integration of an apparently dispersed world. In this ever-changing situation, the knowledge worker must possess a multidisciplinary and systemic vision.

From these premises, it is possible to affirm that the main features of knowledge workers are their flexibility and mobility. Workers easily move across countries, work in different fields (even at the same time) and are flexible to changes in the context they operate in, creating a “life experience” that is completely different from previous generations of workers who mainly settled in a single place for a long period of time, if not for a lifetime.

To operate efficiently, knowledge workers need constant and easy access to communication technologies, access to a challenging and exciting environment in which they can keep up to date and increase their intellectual capital, which represents their main asset.

As Schlechten, Hung and Bussin report<sup>9</sup>:

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<sup>9</sup> SCHLECHTEN, Anton, HUNG, Angel, BUSSIN, Mark, “*Understanding Talent Attraction : the Influence of Financial Rewards Elements on perceived Job Attractiveness*”, Journal of Human Resource Management (Volume 12), (2014)

[https://www.researchgate.net/publication/287554413\\_Understanding\\_talent\\_attraction\\_The\\_influence\\_of\\_financial\\_rewards\\_elements\\_on\\_perceived\\_job\\_attractiveness](https://www.researchgate.net/publication/287554413_Understanding_talent_attraction_The_influence_of_financial_rewards_elements_on_perceived_job_attractiveness)

Human capital has become an important strategic resource for competitive advantage as differentiation now rests with the unique talents of the people in an organization; the war for talent is especially prevalent amongst knowledge workers as the economy has shifted from an industrial economy to a knowledge economy.

From this passage, it is possible to understand the critical role that talent attraction policies play in an international environment in which labor is more and more flexible and mobile and in which the ability to attract the right people, with the right skillsets is fundamental to achieving strategic goals, especially in the high-tech field, which is a knowledge-intensive sector.

### **3.2 The Lack of Adequate Local Talent in China**

The recruitment of international talent becomes even more important in a context in which the amount of local talent is not sufficient to satisfy the development goals set by the government and pursued by industries located in the territory. At the moment, China is facing this situation due to several reasons, well explained in the paper “Recruiting International Talents for Free Trade Zones in China: Learning Points from Singapore”<sup>10</sup>.

First of all, the ageing of the population has become a concerning problem. According to the data provided by the National Bureau of Statistics, the percentage of the working-age population has dropped from 75% in 2010 to 71% in 2019. Secondly, as explained before, by pursuing a strategy of technological independence China is moving up the value chain and is therefore in need of a high amount of highly skilled professionals, generating demand for top talents. Thirdly, China is facing a problem of “misalignment” of talent; the country is facing ineffectiveness and inefficiency of talent education in meeting market demands, creating a misalignment between academic training offered by higher education and skill sets needed by business and industry.

The need for talent in China can then be analyzed in geographical terms. Eastern China, which still is the wealthiest and more developed part of the country occupies only 11% of the Chinese territory but possesses around 43% of the country’s professional talent while the Western region only possesses 15.5% of talents even if it covers the 69.14% of the Chinese territory<sup>11</sup>. Moreover, the vast majority of Chinese graduates prefer to move to first-tier cities such as

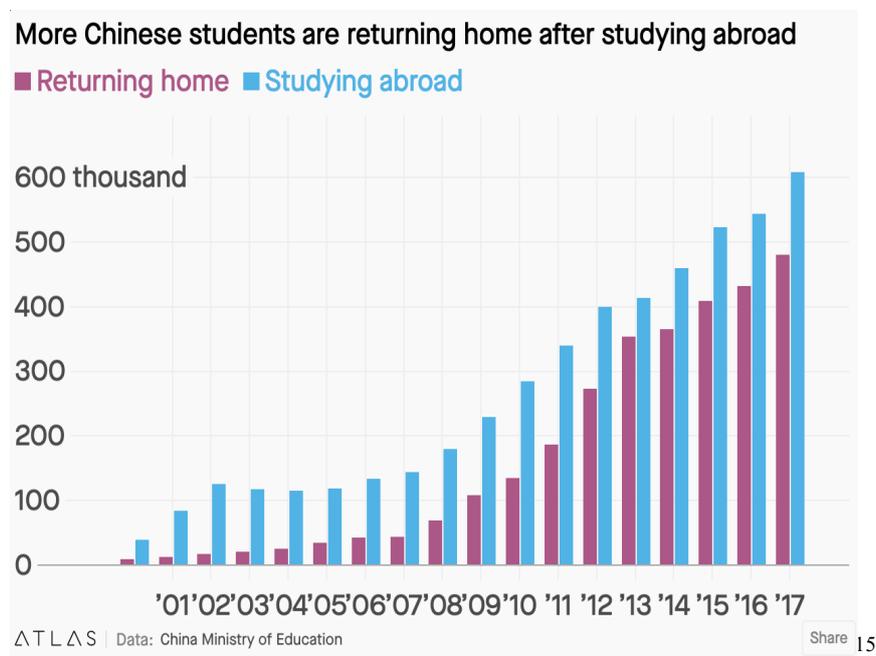
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<sup>10</sup> HO, Terence, ZHANG, Xuyao, “*Recruiting International talents for Free Trade Zones in China: Learning Points from Singapore*”, Asia Competitiveness Institute Research Paper Series, (June 2021) <https://lkyspp.nus.edu.sg/docs/default-source/aci/acirp202110.pdf>

<sup>11</sup> WANG, Jia, “*Talent Development in China: Challenges, Solutions and Recommendations*”, *Advancements in Developing Human Resources* (Volume 20), (2018) [https://www.researchgate.net/publication/336728262\\_Talent\\_development\\_in\\_China\\_Challenges\\_solutions\\_and\\_recommendations](https://www.researchgate.net/publication/336728262_Talent_development_in_China_Challenges_solutions_and_recommendations)

Beijing, Shanghai, Guangzhou, and Shenzhen; this creates a surplus of talents in these cities and inadequate talent supply to other regions of China<sup>12</sup>.

Lastly, for many years China suffered a deficit in terms of exchange of “talent”. Data from the Ministry of Education revealed that from 1978 to 2019, 6.56 million people studied abroad, but only 4.23 million returned to China to pursue their careers<sup>13</sup>. As Ding and Koslowski report<sup>14</sup>, this “brain drain” undermines efforts to improve Chinese universities, reduces the potential for technological achievements and may even put economic development at risk. This situation is rapidly changing in the last years as more and more young Chinese decide to go back home after their academic formation abroad as their home country now offers higher salaries and a constantly better work environment.



In light of this situation and the new reform agenda, Beijing realized that China’s outdated immigration system needed to be revised and kept up to date; to deal with this obstacle, the

<sup>12</sup> WANG, Jia, “Talent Development in China: Challenges, Solutions and Recommendations”, *Advancements in Developing Human Resources* (Volume 20), (2018)

[https://www.researchgate.net/publication/336728262\\_Talent\\_development\\_in\\_China\\_Challenges\\_solutions\\_and\\_recommendations](https://www.researchgate.net/publication/336728262_Talent_development_in_China_Challenges_solutions_and_recommendations)

<sup>13</sup> HO, Terence, ZHANG, Xuyao, “Recruiting International talents for Free Trade Zones in China: Learning Points from Singapore”, *Asia Competitiveness Institute Research Paper Series*, (June 2021)

<sup>14</sup> DING, Sheng, KOSLOWSKI, Rey, “Chinese Soft Power and Immigration Reform: Can Beijing’s Approach to Pursuing Global Talent and Maintaining Domestic Stability Succeed?”, *Journal of Chinese Political Science/Association of Chinese Political Studies* 2016, (May 2016)

DOI 10.1007/s11366-016-9417-z

<sup>15</sup> Image available at: [https://www.researchgate.net/figure/Number-of-students-who-returned-to-China-after-completing-their-education-Statistics\\_fig3\\_346122951](https://www.researchgate.net/figure/Number-of-students-who-returned-to-China-after-completing-their-education-Statistics_fig3_346122951)

Chinese government has enacted laws and issued regulations to attract foreign talent, facilitate the return of skilled Chinese nationals and better regulate the entry, residence and employment of foreigners<sup>16</sup>.

The following paragraphs will analyze some of these policies with a particular focus on how they have been enacted in Free Trade Zones to promote the attraction of foreign talent.

### 3.3 Reforming the Immigration System

China's visa policies form the core of talent attraction policies; nevertheless, the implementation of specific and detailed immigration laws in China that regulate immigration fluxes and provide clear rules regarding different types of visas and their requirements is relatively recent and only dates back to 1985-1986.

As reported in the paper by Ding and Koslowski<sup>17</sup>, in the 1960s and 1970s, Mao Zedong strongly opposed both the immigration of foreigners into the Chinese territory and the emigration of Chinese people abroad; during the Cultural Revolution many Chinese who had previously emigrated abroad and who had come back to their native country were prosecuted and labelled as "class enemies" or "agents of imperialism".

It is once again during the presidency of Deng Xiaoping that things started to change and China opted for a new approach towards not only emigration but also immigration, creating a positive view of "foreign talents". According to Liu<sup>18</sup>, the government guided by Deng carried out "a careful and well-coordinated immigration strategy with a well-defined right to leave and return". Ultimately, the "Law of the People's Republic of China on Control of the Entry and Exit of Aliens"<sup>19</sup> became effective on February 1, 1986, constituting the first example of formal immigration law promulgated in China. The law was far from perfect and still presented several

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<sup>16</sup> DING, Sheng, KOSLOWSKI, Rey, "Chinese Soft Power and Immigration Reform: Can Beijing's Approach to Pursuing Global Talent and Maintaining Domestic Stability Succeed?", Journal of Chinese Political Science/Association of Chinese Political Studies 2016, (May 2016)

DOI 10.1007/s11366-016-9417-z

<sup>17</sup> DING, Sheng, KOSLOWSKI, Rey, "Chinese Soft Power and Immigration Reform: Can Beijing's Approach to Pursuing Global Talent and Maintaining Domestic Stability Succeed?", Journal of Chinese Political Science/Association of Chinese Political Studies 2016, (May 2016)

DOI 10.1007/s11366-016-9417-z

<sup>18</sup> LIU, Guofu, "Chinese Immigration Law", Routledge, (November 17, 2016)

<https://www.routledge.com/Chinese-Immigration-Law/Liu/p/book/9781138268388>

<sup>19</sup> Zhōnghuá rénmín gònghéguó wàiguó rén rùjìng chūjìng guǎnlǐ fǎ , 中华人民共和国外国人入境出境管理法, Law of the People's Republic of China on the Administration of Entry and Exit of Aliens, Ministry of Foreign Affairs of the People's Republic of China (1985)

<https://www.fmprc.gov.cn/chn/pds/ziliao/zt/ywzt/wztt/lqbh/zugmzswjwztexgd/t9777.htm>

critical aspects; moreover, the lack of coordination among government agencies made it very hard to effectively a unified legislative process on immigration fluxes.

Starting from the 1990s, the Chinese government launched several programs to attract talented individuals into the country, with a special focus on educated and skilled overseas Chinese; however, the success of these programs was limited and not many overseas Chinese academics and scientists came back to China due to several critical aspects such as their lack of social and political networks in a society based on 关系 (Guānxi, relationships, social connections) different quality standards for research, attitudes of resistance on the part of Chinese academic staff, reluctant to welcome foreign, difficulties in acquiring work authorization and appropriate jobs for spouses and finding affordable bilingual education for their children born and raised abroad<sup>20</sup>.

An important turning point was reached in 2013 with the introduction of the new and revised “Law of the People’s Republic of China on Control of the Entry and Exit of Aliens”<sup>21</sup>. The introduction of the new law was then followed by the drafting of several administrative regulations in accordance with the new law, to make it more effective and feasible.

The new law introduced 12 different visa types, instead of the previous 8 and specifically created a type of visa dedicated to the introduction of talents in the country; these policies will be analyzed in the following paragraphs.

In conclusion, as Koslowski comments, the Chinese government is joining a trend common among Organization for Economic Cooperation and Development (OECD) member states to adopt selective migration policies favoring immigration of the highly skilled.

The policies to introduce new talent are steadily becoming more and more sophisticated in the Chinese territory; premier Li Keqiang even commented that<sup>22</sup>:

"We welcome foreign experts continuing to participate in and facilitating our reform and opening-up," he said, while promising to make their lives and work more satisfactory in China. [...] What China has achieved in its reform and opening-up should be attributed not only to the hard work of the Chinese people but also to the wisdom and painstaking efforts of the foreign experts"

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<sup>20</sup> CONG, Cao, “*China’s Brain Drain at the High-End: Why Government Policies Have Failed to Attract First-Rate Academics to Return*”, Asian Population Studies (Volume 4), (2008)  
<https://doi.org/10.1080/17441730802496532>

<sup>21</sup> Zhōnghuá rénmín gònghéguó wàiguó rén rùjìng chūjìng guǎnlǐ tiáoli, 中华人民共和国外国人入境出境管理条例中华人民共和国外国人入境出境管理条例, Regulations of the People's Republic of China on the Administration of Entry and Exit of Foreigners, The Central People’s Government of the People’s Republic of China (Order of the State Council of the People's Republic of China N. 637), (July 12, 2013) [http://www.gov.cn/zwggk/2013-07/22/content\\_2452453.htm](http://www.gov.cn/zwggk/2013-07/22/content_2452453.htm)

<sup>22</sup> YINAN, Zhao, “*Premier hails work of Foreign Experts*”, China Daily, (January 22, 2014)  
[http://usa.chinadaily.com.cn/epaper/2014-01/22/content\\_17250797.htm](http://usa.chinadaily.com.cn/epaper/2014-01/22/content_17250797.htm)

### 3.4 Types of Visas for Work and Simplification Processes in Free Trade Zones

As mentioned in the previous paragraph, the “Law of the People’s Republic of China on Control of the Entry and Exit of Aliens”<sup>23</sup> approved in 2013, introduced 12 different types of visas (C, D, F, G, J 1-2, L, M, Q 1-2, R, S 1-2, X 1-2, Z); among these the R and Z visas are those specifically designed for foreigners who wish to work in the Chinese territory.

(十二) Z 字签证，发给申请在中国境内工作的人员。

(九) R 字签证，发给国家需要的外国高层次人才和急需紧缺专门人才。

(12) Z visa, is issued to those who apply for work in China.

(9) The R visa is issued to foreign high-level talents and urgently needed specialized talents needed by the country.

While the Z visa can be considered the basic visa for general working purposes, the R visa is designed for highly skilled or urgently needed talents; in both cases, the applicants still need to apply for a work permit and a residence permit upon arriving in China.

To be able to receive an R type of visa the applicant must be recognized as a “tier A” talent in accordance with China’s tiered work permit classification system approved in 2017<sup>24</sup>. The new system has introduced a three-tier talent grading system for expatriates; while A tier expats enjoy some additional advantages, those falling in tier B and tier C may face tougher entry requirements, lower permit validity, and longer waiting times than before.

Among the advantages provided by an R visa, it is important to note that<sup>25</sup>:

- An R visa holder will be granted a visa with a validity period of 5 to 10 years with multiple entries;
- The spouse and underaged children of an R visa holder can also be granted visas having the same validity period with multiple entries;

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<sup>23</sup> Zhōnghuá rénmín gònghéguó wàiguó rén rùjìng chūjìng guǎnlǐ tiáoli, 中华人民共和国外国人入境出境管理条例中华人民共和国外国人入境出境管理条例, Regulations of the People's Republic of China on the Administration of Entry and Exit of Foreigners, The Central People’s Government of the People’s Republic of China (Order of the State Council of the People's Republic of China N. 637), (July 12, 2013) [http://www.gov.cn/zwgk/2013-07/22/content\\_2452453.htm](http://www.gov.cn/zwgk/2013-07/22/content_2452453.htm)

<sup>24</sup> “China Work Permits: Are You an A, B, or C Tier Talent?”, China Briefing, (July 19, 2017) <https://www.china-briefing.com/news/china-work-permits-are-you-a-b-c-tier-talent/>

<sup>25</sup> YU, Jeanette, WANG, Sophy, “R Visa: A New Type of Visa for Foreign Talents in China”, CMS, (2017) <https://s3.amazonaws.com/documents.lexology.com/14112b30-8d97-40f7-ba2b-5ab65ba52551.pdf?AWSAccessKeyId=AKIAVYILUYJ754JTDY6T&Expires=1663961710&Signature=syPO0u8rfkzc28GZgNu4PDqTzik%3D>

- An R visa applicant can enjoy express service for visa application. An R visa can be issued within 2 working days;
- No visa fees and no express-service fees will be charged to the R visa applicant, his/her spouse and/or underaged children.

As reported by Ho and Zhang<sup>26</sup>, Free Trade Zones further simplify the process of obtaining type R visas in several ways:

At the provincial level, each province has established relevant measures to facilitate the issuance of visas and work permits to foreign talent. In Shanghai, restrictions on age, educational background and work experience in recognizing tier A talent can be relaxed for urgently needed talent. This flexibility ensures the inflow of high-quality talent. In Jiangsu, there is a policy on mutual recognition of foreign talent across FTZs, which allows free mobility of talent to the province. So far, Suzhou FTZ and Nanjing FTZ in Jiangsu province have committed to recognizing any tier A foreign talent previously recognized by other cities in the Yangtze River Delta. For this group, the period of stay could be extended to five years and the work permit application procedure has been simplified.

The topic of working visas is nevertheless quite complex as requirements for different types of visas change almost on an annual basis; it is therefore difficult to draw a clear picture of the current requirements and policies concerning highly skilled talents.

Preferential policies for highly skilled talents are also granted when it comes to longer residency permits or even permanent residency in China; in the “12 Preferential Policies on Immigration, Exit and Entry to Facilitate the Construction of Free-trade Zones”<sup>27</sup> published in 2022 by the Public Security Bureau of Shenzhen Municipality is stated that:

- High-level foreign talents, foreigners who have made significant contributions, and foreigners in special demand may apply to the exit and entry administrations of public security organs for permanent residency in China, with recommendations from relevant State administrations, the provincial people’s government or administering departments of national key development areas. Foreign spouses and minor children of the applicants may apply together.  
[...]
- Overseas Chinese, who work in China with doctoral degrees, or who have been working in China’s national key development areas for four consecutive years and have lived in China for no less than 6 months per year, may apply to the exit and entry administrations of public security organs for permanent residency in China. Foreign spouses and minor children of the applicants may apply together.

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<sup>26</sup> HO, Terence, ZHANG, Xuyao, “*Recruiting International talents for Free Trade Zones in China: Learning Points from Singapore*”, Asia Competitiveness Institute Research Paper Series, (June 2021)  
<https://lkyspp.nus.edu.sg/docs/default-source/aci/acirp202110.pdf>

<sup>27</sup> “12 Preferential Policies on Immigration, Exit and Entry to Facilitate the Construction of Free-trade Zones”, Public Security Bureau of Shenzhen Municipality, (November 17, 2021)  
[http://www.sz.gov.cn/en\\_szgov/services/personal/immigration/content/post\\_1336687.html](http://www.sz.gov.cn/en_szgov/services/personal/immigration/content/post_1336687.html)

[...]

- Foreign talents introduced into domestic key development fields and industries in China and foreign members of innovative entrepreneurial teams may apply to the exit and entry administrations of public security organs for residence permits valid for up to five years with work permits and letters from the employers. Foreign members of innovative entrepreneurial teams may also apply for residence permits valid for up to 5 years with a letter of guarantee from the team leader.
- Foreigners who have made significant contributions or foreigners in special demand may recommend foreign members and assistant scientific researchers in their teams to apply for long-term visas or residence permits valid for up to five years.
- Foreigners hired by enterprises and public institutions in China, who have acquired work permits yet have no work visas, may apply to the exit and entry administrations of public security organs for residence permits for foreigners working in China. Applicants who have acquired such permits valid for one year or longer for two consecutive times and have no violations may apply to the exit and entry administrations of public security organs for five-year residence permits for foreigners working in China according to regulations.
- 8. High-level foreign talents working full-time for domestic key higher-education institutes, scientific research institutes and renowned enterprises in China may work part-time for innovative entrepreneurial teams with permission from the full-time employers and part-time employers after reporting to the exit and entry administrations of public security organs.
- Outstanding foreign students, who have completed undergraduate or higher-level programs in domestic key higher-education institutes and work for innovative entrepreneurial projects in China after graduation, may apply to the exit and entry administrations of public security organs for two-to-five-year residence permits with graduation certificates and relevant materials in innovative entrepreneurship.
- Foreign students, who have graduated from international renowned higher-education institutes and work on innovative entrepreneurial projects in China within 2 years after graduation, may apply to the exit and entry administrations of public security organs for residence permits of up to two years.

[...].

These points set preferential policies not only for highly skilled workers in several fields but also for talented students who previously had to at least have two years of work experience to obtain a working visa.

Even though preferential visas and residency terms are a fundamental part of China and Free Trade Zones' talent attraction policies, they are not sufficient. It is fundamental to provide better living conditions for highly skilled foreigners willing to move to China and Free Trade Zones. The next paragraph analyzes some preferential policies granted in Free Trade Zones that aim at providing better living conditions and incentives to highly skilled individuals and their families.

### **3.5 Preferential Policies and Incentives for Talents in Free Trade Zones**

Several Free Trade Zones and, more in general, Special Zones in China offer a broad variety of advantages to foreign talents willing to move and work in these areas; these advantages include

reductions in individual income taxes, housing subsidies, education subsidies for the children and preferential healthcare plans.

It is interesting to note that preferential policies are not introduced only by first-tier cities such as Beijing, Shanghai, Shenzhen and Guangzhou but also, if not especially, by second and third-tier cities that wish to become more attractive in the eyes not only of foreign highly skilled professionals but also local university graduates. These efforts seem to be quite effective as a survey carried out by Zhaopin.com, one of China's leading recruitment websites, shows that 37.5% of China's university graduates in 2017 want to work in second and third-tier cities<sup>28</sup>; these destinations are more and more interesting even in the eyes of foreign talents that have broadened their horizons beyond Beijing and Shanghai.

It is to be noted that even though the attraction of high-level talents is a national objective, most of the advantages and incentives granted to foreign talents vary considerably at the regional and provincial levels; it is therefore very complex to draw a full picture of all the preferential policies for talent attraction that are currently active on the Chinese territory.

The following paragraphs briefly present some of the main fields in which the government is investing to create an environment able to attract talents and pursue its innovation strategy, providing some examples of local policies in Free Trade Zones.

### **3.5.1 Tax Reductions on Individual Income**

Foreign Talents are offered preferential tax treatment in several areas.

The Lingang (Shanghai) FTZ for example, will grant tax subsidies to offset the difference between higher income tax rates in Shanghai and the lower ones in Hong Kong; Shanghai is not the first city to offer this preferential treatment that had already been implemented in the Greater Bay Area in Southern China.

In Shenzhen, for example, eligible overseas applicants and employers (on behalf of their foreign employees) can apply for a subsidy whose amount is equivalent to their taxable income beyond 15%. This means that the exceeding portion of their taxable income will be subsidized by the municipal government once a year until December 31, 2023<sup>29</sup>.

To apply for the subsidy, candidates need to be part of one of the following categories:

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<sup>28</sup> “*Second and third tier cities compete to attract talents*”, China Daily, (October 14, 2017)  
[https://www.chinadaily.com.cn/china/2017-10/14/content\\_33236115.htm](https://www.chinadaily.com.cn/china/2017-10/14/content_33236115.htm)

<sup>29</sup> “*Tax Incentives in China*”, Dezan Shira and Associates, (October 2021)  
<https://www.asiabriefing.com/store/book/tax-incentives-in-china.html>

- A national, provincial or municipal major talent project candidate;
- An overseas high-level talent recognized by the state, province, or city
- Having obtained the Guangdong “Excellent Talent Card”;
- A Foreign worker with type A and B permit with a permanent residency in China;
- A member of a scientific research team or management team at the national, provincial, or municipal level of major innovation platforms as well as higher education, scientific research institutions, or hospitals;
- A foreign talent with outstanding skills, working for one of the Fortune 500 companies and their branches or large and listed companies or high-tech and innovation enterprises;
- A middle-level manager, research team member, or key young talents in major development industries in the “nine cities”<sup>30</sup>.

In Suzhou (Jiangsu) FTZ it is possible to find similar incentives; as stated on the official website of the Suzhou local government<sup>31</sup>, authorities undertake to:

12. 给予高端和急需人才奖励。对符合条件的年工资薪金 40 万元及以上，依法在苏州自贸片区缴纳个人所得税的外国高端人才（A 类），按其年工资薪金不低于 5%的比例给予奖励，最高不超过 20%，每人每年不超过 40 万元；有特殊贡献的，最高可给予每年 100 万元奖励。

13. 便利《江苏省海外高层次人才居住证》办理。支持符合条件的外国人才办理《江苏省海外高层次人才居住证》，凭证享受个人所得税奖励等相关待遇，免办工作许可。

12. Reward high-end and urgently needed talents. Qualified foreign high-end talents (tier A talents) who have an annual salary of 400,000 yuan and above and who have paid individual income tax in the Suzhou Free Trade Zone according to law, will be rewarded at a rate of not less than 5% of their annual salary, with a maximum of 20%. The limit is that of 400,000 yuan per person per year; if there are special contributions, a maximum of 1 million yuan per year can be awarded.

<sup>30</sup> Guangzhou, Shenzhen, Zhuhai, Foshan, Huizhou, Dongguan, Zhongshan, Jiangmen and Zhaoqing

<sup>31</sup> Sūzhōu gōngyè yuánqū: “Guānyú wàiguó réncái gōngzuò shēnghuó biān lǐ huà fúwù ruògān jǔcuò (shíxíng), 苏州工业园区：关于外国人才工作生活便利化服务若干举措（试行），Suzhou Industrial Park: Several Measures for Facilitation of Work and Life for Foreign Talents (Trial), Suzhou Municipal People's Government, (February 22, 2021) <http://www.suzhou.gov.cn/yhyshjzl/zcwj/202102/e2b1714358ab44519c348864c076c321.shtml>

13. Facilitate the application of talents to the "Jiangsu Province Overseas High-level Talents Residence Permit". Through the "Jiangsu Province Overseas High-level Talents Residence Permit", talents can enjoy personal income tax incentives and other related preferential treatments and can be exempted from work permits.

In 2020 also Hainan FTZ offered similar incentives, valid through 2024<sup>32</sup>:

海南省财政厅，国家税务总局海南省税务局：

为支持海南自由贸易港建设，现就有关个人所得税优惠政策通知如下：

- 一、对在海南自由贸易港工作的高端人才和紧缺人才，其个人所得税实际税负超过 15%的部分，予以免征。
- 二、享受上述优惠政策的所得包括来源于海南自由贸易港的综合所得（包括工资薪金、劳务报酬、稿酬、特许权使用费四项所得）、经营所得以及经海南省认定的人才补贴性所得。
- 三、纳税人在海南省办理个人所得税年度汇算清缴时享受上述优惠政策。[...]
- 五、本通知自 2020 年 1 月 1 日起执行至 2024 年 12 月 31 日。

Hainan Provincial Department of Finance, State Administration of Taxation Hainan Provincial Taxation Bureau:

In order to support the construction of the Hainan Free Trade Port, the relevant preferential policies for individual income tax (IIT) are hereby notified as follows:

1. For high-end talents and highly needed talents working in the Hainan Free Trade Port, the actual tax burden of personal income tax exceeding 15% shall be exempted.
2. Incomes enjoying the above preferential policies include comprehensive incomes from Hainan Free Trade Port (including wages, salaries, labor remuneration and royalties), business incomes, and talent subsidy incomes recognized by the Hainan Province.
3. Taxpayers enjoy the above preferential policies when handling the annual final settlement of individual income tax (IIT) in the Hainan Province. [...]
5. This notice will be implemented from January 1, 2020 and will remain valid until December 31, 2024.

As seen above, regulations concerning tax incentives and particularly IIT are territory specific; it is therefore fundamental to consult local government websites of the single province, if not city, to be adjourned on the available subsidies.

### 3.5.2 Housing Incentives

Housing incentives are another type of incentive offered to talents in many Free Trade Zones. The Lingang (Shanghai) FTZ offers fixed-price housing for overseas talents; eligible high-level talents that do not own a house can rent “talent apartments” in that area. Furthermore, foreign

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<sup>32</sup> Guānyú hǎinán zìyóu màoùyì gāng gāoduān jīnquē réncái gèrén suǒdèshuì zhèngcè de tōngzhī cáishuì [2020]32 hào, 关于海南自由贸易港高端紧缺人才个人所得税政策的通知财税（2020）32 号, Notice on the personal income tax policy for high-end talents in short supply in Hainan Free Trade Port, Caishui [2020] No. 32, State Taxation Administration, (June 23, 2020) <http://www.chinatax.gov.cn/chinatax/n810341/n810755/c5153893/content.html>

talents who have paid their IIT and social security for three years in the area will have the privilege of buying and owning a house in the said area<sup>33</sup>.

The Suzhou (Jiangsu) FTZ also offers similar benefits<sup>34</sup>:

17. 深化外国人才住房保障。在苏州自贸片区全职工作、投资创业且符合有关规定的外国人才，享受人才优购房、优租房、“虚拟优租房”补贴等人才安居政策。

17. Deepening housing security for foreign talents. Foreign talents who work full-time, invest and start businesses in the Suzhou Free Trade Zone and meet relevant regulations can enjoy preferential housing policies for talents, preferential privileges regarding rentals, and have access to the “Virtual Best Rent” subsidy and other types of preferential policies regarding housing.

The Suzhou local government mainly provides preferential housing policies to highly skilled talents through two programs: the 实体优租房 “Physical Preferential Renting Program” and the 虚拟优租房 “Virtual Preferential Renting Program”<sup>35</sup>. While the first one enables talents to receive preferential access to housing opportunities inside the Suzhou Industrial Park at lower prices, the second one deals with the rental housing shortage in the Suzhou FTZ<sup>36</sup> and allows highly skilled talents who would have the right to access preferential housing inside the Suzhou Industrial Park but cannot do so due to the current lack of available houses to rent by themselves a property and then receive a subsidy by the government to cover part of the expenses for a maximum period of 36 months.

In 2018 Hainan launched its 百万人才进海南行动计划（2018—2025年）“Plan for the attraction of one million talents by 2025”<sup>37</sup>. The plan provides several incentives and preferential policies to help attract talents for the construction of the Hainan island-wide Free Trade Zone and the Hainan Free Trade Port; among these, “housing security” is an important theme.

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<sup>33</sup> “Special tax and housing incentives for foreign talents”, S.J. Grand, (2018)

<https://www.sjgrand.cn/special-incentives-for-overseas-talents-in-shanghai/>

<sup>34</sup> Guānyú wàiguó réncái gōngzuò shēnghuó biān lì huà fúwù ruògān jǔcuò (shíxíng)” sū yuán guǎn [2020]83 hào, 关于外国人才工作生活便利化服务若干举措（试行）苏园管〔2020〕83号, Several Measures for Facilitation of Work and Life Services for Foreign Talents (Trial) Su Yuanguan [2020] No. 83, Management Committee of the Suzhou Industrial Park, (June 30, 2022)

<https://tsc.sipac.gov.cn/epservice//techsub/Apps/sme/index.php?s=/PolicySearch/policydetail/policyid/4e0945c2-776e-11eb-abc-b-d89ef3248d16>

<sup>35</sup> Sūzhōu gōngyè yuánqū shí tǐ yōu zūfáng hé xūnǐ yōu zūfáng (zūfáng bǔtiē), 苏州工业园区实体优租房和虚拟优租房（租房补贴）, Zhihu, (2022)

<https://zhuankan.zhihu.com/p/493504643>

<sup>36</sup> More specifically in the Suzhou Industrial Park.

<sup>37</sup> Bǎi wàn réncái jìn hǎinán xíngdòng jìhuà (2018—2025) nián, 百万人才进海南行动计划（2018—2025年）, Plan for the attraction of one million talents by 2025, Available at: Hainan University Website, (Published on the University Website on November 11, 2020; Original Document: 2018) <https://ha.hainanu.edu.cn/gjh/info/1029/1082.htm>

#### Point 4 of the plan affirms that:

对于引进人才的住房问题，《行动计划》提出从以下方面进行保障：一是在人才购房方面，《行动计划》明确提出，对引进的各类人才自在琼落户之日起购买商品住宅，享受本地居民同等待遇，不受限购政策限制。[...]二是在人才住房保障方面，海南将为引进的大师级人才、杰出人才、领军人才分别按 200 平方米、180 平方米、150 平方米标准提供免租金、可拎包入住的人才公寓，全职工作满 5 年赠予 80% 产权，满 8 年赠予 100% 产权。同时，为其他各类人才提供住房租赁补贴，其中拔尖人才每月 5000 元，其他类高层次人才每月 3000 元，40 岁以下的全日制硕士生每月 2000 元，35 岁以下的全日制本科生每月 1500 元，连续补贴 3 年。

Regarding the housing issue for the introduction of talents, the "Action Plan" proposes to guarantee the following aspects:

First, in terms of the purchase of houses by talents, the "Action Plan" clearly states that all kinds of talents who are introduced in Hainan will be able to purchase commercial housing from the day they settle down in the area, enjoying the same treatment as locals and therefore not being restricted by the by Purchase Restriction Policy<sup>38</sup>. [...]

Second, in terms of housing security for talents, Hainan will provide master-level talents, outstanding talents, and leading talents with rent-free apartments of 200 square meters, 180 square meters, and 150 square meters for them to live in. 80% of the property rights will be granted within 5 years, and 100% of the property rights will be granted after 8 years. At the same time, housing rental subsidies are provided for other types of talents, including 5,000 yuan per month for top-notch talents, 3,000 yuan per month for other high-level talents, 2,000 yuan per month for full-time master students under the age of 40, and full-time undergraduate students under the age of 35. 1,500 yuan per month for students, for a duration of 3 years.

### 3.5.3 Healthcare Plans and Education

Healthcare plans and education are two fundamental points of the preferential policies granted to highly skilled talents. The decision of many professionals to move to a determined area is greatly influenced by the security and comforts provided not only to them but also to other members of their family, especially children. In this context providing first-level services when it comes to healthcare and education is fundamental to be able to keep these talents in the country in the long run.

In Suzhou children of tier A talents can benefit from the same educational resources as local students regardless of their nationalities and Hukou status. A subsidy of 20,000 to 40,000 RMB is provided if the children opt for non-public schools as, for example, international schools<sup>39</sup>.

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<sup>38</sup> The real estate market in Hainan's territories of Wuzhishan, Baoting, Qiongzong and Baisha is currently being kept under strict control by the local government that imposed a "Global Purchase Restriction Policy" *de facto* banning the purchase of houses in the area to non-locals, following Xi Jinping's principle that "houses are for living, not for speculation".

<sup>39</sup> HO, Terence, ZHANG, Xuyao, "Recruiting International talents for Free Trade Zones in China: Learning Points from Singapore", Asia Competitiveness Institute Research Paper Series, (June 2021) <https://lkyspp.nus.edu.sg/docs/default-source/aci/acirp202110.pdf>

In the Qingdao (Shandong) FTZ tier A talents have the freedom to choose the school in which to enrol their children throughout the whole city:

(9) 子女入学<sup>40</sup>

高层次人才随迁子女（无论户口随迁与否）在我市接受教育，根据人才层次类别分别给予优待。A类人才子女就学可在全市范围内统筹；B类人才子女就学可在所在区（市）内统筹；C类人才子女就学根据户籍所在地统筹。具体入学办法结合省市相关要求，由市教育局制定细则实施。

(9) Enrollment of children

Children of high-level talents who have moved with them (regardless of whether their household registration has moved with them or not) receive education in our city, and they will be given preferential treatment according to the level and category of talents. The schooling of the children of A-type talents can be coordinated throughout the city; the schooling of the B-type talents' children can be coordinated in the district (city) where they are located; the schooling of the C-type talents' children can be coordinated according to the location of their household registration. The specific admission methods are combined with the relevant requirements of the province and city, and the Municipal Education Bureau shall formulate detailed rules for implementation.

Healthcare is another sector in which the government is investing heavily. In the Hainan FTZ, for example, a series of laws and policies were designed to speed up the import of medicines and sanitary equipment, making foreign enterprises and social organizations significantly less restricted by policies or laws when they carry out trade and exchanges in the HFTP compared to elsewhere in China; the local government also undertook to liberalize cutting-edge medical research within its jurisdiction<sup>41</sup>. These measures aim at developing Hainan's healthcare system to transform the island into a high-quality environment for medical treatment in China.

Apart from the quality of the healthcare system, in Hainan, all kinds of talents introduced, cultivated and employed on the island, including foreign talents and migratory talents whose household registration is not in Hainan, are eligible for the medical security policy benefits; the insurance policy is also extended to talents' spouses as the government will pay for their basic medical insurance for a maximum of three years if they are unable to get employment due to health conditions and personal abilities, according to the Implementation Measures for the Employment and Resettlement of the Spouses of High-level Talents in Hainan Province, which was issued by the Hainan Provincial Committee in 2018.

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<sup>40</sup> “Shāndōng huì cái kǎ” hé qīngdǎo shì gāo céngcì réncái fúwù lǜkǎ fúwù shǒucè, “山东惠才卡”和青岛市高层次人才服务绿卡服务手册, "Shandong Huicai Card" and Qingdao High-level Talent Service Green Card Service Manual, GIBERT and SEI Website (Network for Talented Personnel Section)  
<http://hr.qibebt.ac.cn/info/1052/1342.htm>

<sup>41</sup> QI, Fei, WU, Yuqi, WANG, Jing, WANG, Qi, “China's Hainan Free Trade Port: Medical Laws and Policy Reform”, Asian Pharmaceutical and Medical Device Industry Innovation - Perspectives up to 2050, (2021)  
doi: 10.3389/fpubh.2021.764977

Talents of and above Category B who work full-time in Hainan are covered by medical care services of the Hainan Provincial Health Commission and the government provides certain medical insurance service benefits for them such as an annual free health check-up.

Tier A talents are insured for a sum of 20.000 yuan (\$3.076) per person per year for medical and healthcare services, plus a premium of 10.000 yuan per year (adjustable based on economic conditions).

Apart from the medical insurance, talents receive preferential treatment through the “green channel” which entails that they can receive diagnosis or treatment in the VIP rooms of the second-level public hospitals and public specialized hospitals in the Hainan province, plus their spouses or lineal kin can receive the same preferential treatment by showing their medical care cards or other relevant certificates.

### **3.6 Final Remarks and Learning Points for the Attraction of Foreign Talent in China’s FTZs**

As explained in previous paragraphs, being able to attract high-level talents is fundamental in this new “knowledge-based” work system. It is simply not possible for China to achieve its goals in terms of technological development if the country is not able to attract the right people with the right skill set whose amount is currently insufficient at the local level.

The world is more and more interconnected and workers are more and more flexible and movable; in this context, creating attractive work destinations which offer different types of benefits (both on the professional and personal level) is a key aspect of obtaining a strategic advantage in the global “talent war”.

In conclusion, the paper “Recruiting International Talents for Free Trade Zones in China: Learning Points from Singapore”<sup>42</sup> provides some interesting learning points for the further development of the “talent attraction policy” that China is currently pursuing.

First of all, it is important to remember that foreign talent should be seen as “complementary” to local talent, therefore the government should always pay attention to creating opportunities for the development of locals, even facilitating the transfer of skills and know-how from foreigners to locals. In selecting foreigners for entry, those who can create local employment opportunities or add value to local networks should be prioritized. Mixing local and foreign

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<sup>42</sup> HO, Terence, ZHANG, Xuyao, “*Recruiting International talents for Free Trade Zones in China: Learning Points from Singapore*”, Asia Competitiveness Institute Research Paper Series, (June 2021) <https://lkyspp.nus.edu.sg/docs/default-source/aci/acirp202110.pdf>

knowledge is advisable as much learning takes place through interaction among team members at work, in their sharing of their experience and expertise, and not just through formal training courses.

At the same time investing in young locals with potential is important to create a more innovative cultural ecosystem for the future, no longer dependent on the import of foreign talent; this process obviously takes time but should be seen as a valid investment for the future.

Secondly, it is advised to attract talents based on a “cluster” dynamic as a targeted approach could lead to the creation of clusters of expertise in some specific and advantageous fields as it happened in Singapore in the life sciences, artificial intelligence, data analytics and cybersecurity fields.

Thirdly, improving the livability for talents is fundamental. As stressed in the previous paragraphs, creating a welcoming environment for not only the talent himself/herself but also for his/her family is a key aspect; this requires particular attention in fields such as personal security, transport, environment and air quality, as well as access to affordable and high-quality housing, education and healthcare services and a diverse offering of recreational activities.

Fourthly, taking into account the flexibility and mobility of talents, it is advisable to strengthen the FTZs’ position in global talent networks. Efforts should be made to keep in touch with both Chinese nationals and foreigners who have spent time in the FTZ but who are currently working elsewhere, this could potentially attract some of these global talents back to the city or FTZ in the future.

China is already working hard on many of these points using once again FTZs as testing grounds for talent attraction policies and innovation hubs.

## Conclusion

Many developing countries experimented with Special Economic Zones in the early stages of their industrialization process and China is among them; the results are quite mixed globally, with several successful examples, such as those in Asian and Latin American countries, and some struggling operations, particularly in the case of several Sub-Saharan African countries<sup>43</sup>. Such differences in outcomes created heated debates on the ultimate utility of using this tool to promote economic development; in the case of China, it is undeniable that, even though Special Economic Zones entailed several downsides such as high levels of inequality, environmental concerns and overpopulation of certain areas, their implementation was very successful, achieving great results both in terms of economic growth and development.

As reported in Chapter 1, one of the main elements that determine the ultimate success or failure of Special Economic Zones is the definition of clear objectives that governments wish to achieve through their introduction. Special Economic Zones should not be seen as merely instruments to attract huge quantities of FDI and should not only focus on labor intensive industries; governments should adopt a broader view and create SEZs that are effective in attracting quality investments and deliver positive externalities, including catalyzing economic reforms, facilitating learning, innovation, upgrading and structural transformation<sup>44</sup>.

Through the implementation of SEZs in the 1980s and 1990s, China was able to support the gradual opening-up of the economy and experiment with new and innovative policies while, at the same time, allowing the central government to still control the pace of such change and manage the downsides of trade liberalization. In this regard, it is possible to affirm that SEZs in China completely reached their initial goal.

SEZs in China have been developed as a long-term industrial development strategy with aims and targets that are adjusted accordingly to the changing conditions of the country. If the aims of the first SEZs in China were those of attracting FDI, study capitalism and its dynamics, test

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<sup>43</sup> ZENG, Zhihua Douglas, “*Special Economic Zones: Lessons from the Global Experience*”, PEDL Synthesis Paper Series (No.1), (July 16, 2019)  
[https://assets.publishing.service.gov.uk/media/586f9727e5274a130700012d/PEDL\\_Synthesis\\_Paper\\_Piece\\_No\\_1.pdf](https://assets.publishing.service.gov.uk/media/586f9727e5274a130700012d/PEDL_Synthesis_Paper_Piece_No_1.pdf)

<sup>44</sup> ZENG, Zhihua Douglas, “*Global Experiences with Special Economic Zones: Focus on China and Africa*”, World Bank Group (Policy Research Working Paper No. 7240), (April 2015)  
<https://openknowledge.worldbank.org/handle/10986/21854>

different policies, acquire technologies and know-how, accelerate exports and create local job opportunities<sup>45</sup>, nowadays these aims have changed considerably.

China's economic strategy is aiming towards a new direction whose supporting pillars are the moving away from an export-led economic strategy towards a more balanced "Dual Circulation" model rooted in the potential of China's domestic market, the achievement of technological self-sufficiency, the transformation of the country into an advanced technological environment rich in knowledge-intensive and high value-added industries and the creation of a more prosperous and equal society.

In 2013 China inaugurated a new generation of Free Trade Zones, whose pilot project was the Shanghai FTZ; to date, there are twenty-one Free Trade Zones active in China distributed all over the country.

According to several experts, what led the Chinese government to experiment with this new project was the necessity to create a new development model for the country, a model no longer based on the replication of the past development path from when China's economy was still relatively small and undeveloped<sup>46</sup>.

In this context Free Trade Zones act as testing grounds for new policies that aim not only at facilitating the day-to-day life of companies, creating a modern institutional system in line with international standards but also but also at creating innovation in several industrial fields thanks to the more and more "specialized nature" of this zones and the preferential policies granted to investors and companies.

In this regard, the introduction of a national negative list for market entry is just one example of an innovative policy that has first been tested in FTZs and then elevated at the national level; what we observe with the passage from a positive to a negative list approach is a substantial change in administering FDI, a complete reform of "the logic of the system" – from approval to filing – an important step towards decentralization and delegation of power<sup>47</sup> that leads to a more modern and simplified institutional structure.

From an economic point of view, FTZs also achieved some interesting results. Through the first seven months of 2020, Chinese FTZs contributed \$400 billion in foreign trade (13.5% of

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<sup>45</sup> RUBINI Laretta, DI TOMMASO, Marco R., BARBIERI, Elisa, "*Special Economic Zones and Cluster Dynamics: China*", International Encyclopedia of the Social & Behavioral Sciences, (2015)

[https://www.researchgate.net/publication/274231455\\_Special\\_Economic\\_Zones\\_and\\_Cluster\\_Dynamics\\_China](https://www.researchgate.net/publication/274231455_Special_Economic_Zones_and_Cluster_Dynamics_China)

<sup>46</sup> "*Free Trade Zones in China*", The Canadian Trade Commissioner Service in China, (2022)

<https://www.tradecommissioner.gc.ca/china-chine/ftz-zle.aspx?lang=eng>

<sup>47</sup> JAKUBCZAK, Jacek, "*China's Foreign Investment Encouraged Catalogue and Negative Lists as a Tool of Foreign Direct Investment Attraction*", *Annales Universitatis Mariae Curie-Skłodowska (Section H-Economics)*, Vol. 54, No. 2), (2020)

<https://journals.umcs.pl/h/article/view/10061>

China's total) and attracted more than 3,300 new foreign enterprises, accounting for \$13.3 billion in foreign investment (16.8% of China's total)<sup>48</sup>.

It must be noted that, the effectiveness of this “experimentation approach” in China has rested on special institutional prerequisites such as the Communist Party's unitary, hierarchical organization and the Maoist legacy of a cellular economic administration, narrowly defined policy imperatives, policymakers who are not subject to electoral cycles or democratic competition and who are unified in their commitment to economic modernization<sup>49</sup>. China's experience is therefore almost impossible to replicate and constitutes a *unicum* in terms of development strategy.

In conclusion, this new generation of Free Trade Zones has *de facto* inherited the task of leading China towards a new development model, in line with the new strategic objectives of the country, just as the first Special Economic Zones did in the era of Deng Xiaoping's reforms. The important results that they were able to achieve in the last few years are an important signal that the “purely pragmatic” experimentalist approach<sup>50</sup> is still effective in the Chinese panorama and is still able to lead the country towards innovation.

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<sup>48</sup> HENDERSON, Joshua, “*China's New Free Trade Zones: A Pivot Inward?*”, Center for Strategic and International Studies (CSIS), October 2020)

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## Appendix A

Hereinafter are reported the “Circular of the State Council on the Framework Plan for the China (Shanghai) Pilot Free Trade Zone” and the “Framework Plan for the China (Shanghai) Pilot Free Trade Zone” 国发【2013】No.38.

The following documents were instrumental in the drafting process of this dissertation and constitute the first official documents promulgated by the State Council of the People’s Republic of China concerning the new generation of Free Trade Zones in China and, in particular, its pilot project: the Shanghai Pilot Free Trade Zone.

These documents were partially quoted in the dissertation; important information was nevertheless omitted as it was not directly relevant to the topic of discussion, but still useful to provide further insights.

**国务院关于印发中国（上海）  
自由贸易试验区总体方案的通知**  
国发〔2013〕38号

各省、自治区、直辖市人民政府，国务院各部委、各直属机构：

国务院批准《中国（上海）自由贸易试验区总体方案》（以下简称《方案》），现予印发。

一、建立中国（上海）自由贸易试验区，是党中央、国务院作出的重大决策，是深入贯彻党的十八大精神，在新形势下推进改革开放的重大举措，对加快政府职能转变、积极探索管理模式创新、促进贸易和投资便利化，为全面深化改革和扩大开放探索新途径、积累新经验，具有重要意义。

二、上海市人民政府要精心组织好《方案》的实施工作。要探索建立投资准入前国民待遇和负面清单管理模式，深化行政审批制度改革，加快转变政府职能，全面提升事中、事后监管水平。要扩大服务业开放、推进金融领域开放创新，建设具有国际水准的投资贸易便利、监管高效便捷、法制环境规范的自由贸易试验区，使之成为推进改革和提高开放型经济水平的“试验田”，形成可复制、可推广的经验，发挥示范带动、服务全国的积极作用，促进各地区共同发展。有关部门要大力支持，做好协调配合、指导评估等工作。

三、根据《全国人民代表大会常务委员会关于授权国务院在中国（上海）自由贸易试验区暂时调整有关法律规定的行政审批的决定》，相应暂时调整有关行政法规和国务院文件的部分规定。具体由国务院另行印发。

《方案》实施中的重大问题，上海市人民政府要及时向国务院请示报告。

国务院

2013年9月18日

（此件公开发布）

## 中国（上海）自由贸易试验区总体方案

建立中国（上海）自由贸易试验区（以下简称试验区）是党中央、国务院作出的重大决策，是深入贯彻党的十八大精神，在新形势下推进改革开放的重大举措。为全面有效推进试验区工作，制定本方案。

### 一、总体要求

试验区肩负着我国在新时期加快政府职能转变、积极探索管理模式创新、促进贸易和投资便利化，为全面深化改革和扩大开放探索新途径、积累新经验的重要使命，是国家战略需要。

#### （一）指导思想。

高举中国特色社会主义伟大旗帜，以邓小平理论、“三个代表”重要思想、科学发展观为指导，紧紧围绕国家战略，进一步解放思想，坚持先行先试，以开放促改革、促发展，率先建立符合国际化和法治化要求的跨境投资和贸易规则体系，使试验区成为我国进一步融入经济全球化的重要载体，打造中国经济升级版，为实现中华民族伟大复兴的中国梦作出贡献。

#### （二）总体目标。

经过两至三年的改革试验，加快转变政府职能，积极推进服务业扩大开放和外商投资管理体制改革，大力发展总部经济和新型贸易业态，加快探索资本项目可兑换和金融服务业全面开放，探索建立货物状态分类监管模式，努力形成促进投资和创新的政策支持体系，着力培育国际化和法治化的营商环境，力争建设成为具有国际水准的投资贸易便利、货币兑换自由、监管高效便捷、法制环境规范的自由贸易试验区，为我国扩大开放和深化改革探索新思路和新途径，更好地为全国服务。

#### （三）实施范围。

试验区的范围涵盖上海外高桥保税区、上海外高桥保税物流园区、洋山保税港区和上海浦东机场综合保税区等4个海关特殊监管区域，并根据先行先试推进情况以及产业发展和辐射带动需要，逐步拓展实施范围和试点政策范围，形成与上海国际经济、金融、贸易、航运中心建设的联动机制。

### 二、主要任务和措施

紧紧围绕面向世界、服务全国的战略要求和上海“四个中心”建设的战略任务，按照先行先试、风险可控、分步推进、逐步完善的方式，把扩大开放与体制改革相结

合、把培育功能与政策创新相结合，形成与国际投资、贸易通行规则相衔接的基本制度框架。

（一）加快政府职能转变。

1.深化行政管理体制改革。加快转变政府职能，改革创新政府管理方式，按照国际化、法治化的要求，积极探索建立与国际高标准投资和贸易规则体系相适应的行政管理体系，推进政府管理由注重事先审批转为注重事中、事后监管。建立一口受理、综合审批和高效运作的服务模式，完善信息网络平台，实现不同部门的协同管理机制。建立行业信息跟踪、监管和归集的综合评估机制，加强对试验区内企业在区外经营活动全过程的跟踪、管理和监督。建立集中统一的市场监管综合执法体系，在质量技术监督、食品药品监管、知识产权、工商、税务等管理领域，实现高效监管，积极鼓励社会力量参与市场监督。提高行政透明度，完善体现投资者参与、符合国际规则的信息公开机制。完善投资者权益有效保障机制，实现各类投资主体的公平竞争，允许符合条件的外国投资者自由转移其投资收益。建立知识产权纠纷调解、援助等解决机制。

（二）扩大投资领域的开放。

2.扩大服务业开放。选择金融服务、航运服务、商贸服务、专业服务、文化服务以及社会服务领域扩大开放（具体开放清单见附件），暂停或取消投资者资质要求、股比限制、经营范围限制等准入限制措施（银行业机构、信息通信服务除外），营造有利于各类投资者平等准入的市场环境。

3.探索建立负面清单管理模式。借鉴国际通行规则，对外商投资试行准入前国民待遇，研究制订试验区外商投资与国民待遇等不符的负面清单，改革外商投资管理模式。对负面清单之外的领域，按照内外资一致的原则，将外商投资项目由核准制改为备案制（国务院规定对国内投资项目保留核准的除外），由上海市负责办理；将外商投资企业合作章程审批改为由上海市负责备案管理，备案后按国家有关规定办理相关手续；工商登记与商事登记制度改革相衔接，逐步优化登记流程；完善国家安全审查制度，在试验区内试点开展涉及外资的国家安全审查，构建安全高效的开放型经济体系。在总结试点经验的基础上，逐步形成与国际接轨的外商投资管理制度。

4.构筑对外投资服务促进体系。改革境外投资管理方式，对境外投资开办企业实行以备案制为主的管理方式，对境外投资一般项目实行备案制，由上海市负责备案管理，提高境外投资便利化程度。创新投资服务促进机制，加强境外投资事后管理和服

务，形成多部门共享的信息监测平台，做好对外直接投资统计和年检工作。支持试验区内各类投资主体开展多种形式的境外投资。鼓励在试验区设立专业从事境外股权投资的项目公司，支持有条件的投资者设立境外投资股权投资母基金。

### （三）推进贸易发展方式转变。

5.推动贸易转型升级。积极培育贸易新型业态和功能，形成以技术、品牌、质量、服务为核心的外贸竞争新优势，加快提升我国在全球贸易价值链中的地位。鼓励跨国公司建立亚太地区总部，建立整合贸易、物流、结算等功能的营运中心。深化国际贸易结算中心试点，拓展专用账户的服务贸易跨境收付和融资功能。支持试验区内企业发展离岸业务。鼓励企业统筹开展国际国内贸易，实现内外贸一体化发展。探索在试验区内设立国际大宗商品交易和资源配置平台，开展能源产品、基本工业原料和大宗农产品的国际贸易。扩大完善期货保税交割试点，拓展仓单质押融资等功能。加快对外文化贸易基地建设。推动生物医药、软件信息、管理咨询、数据服务等外包业务发展。允许和支持各类融资租赁公司在试验区内设立项目子公司并开展境内外租赁服务。鼓励设立第三方检验鉴定机构，按照国际标准采信其检测结果。试点开展境内外高技术、高附加值的维修业务。加快培育跨境电子商务服务功能，试点建立与之相适应的海关监管、检验检疫、退税、跨境支付、物流等支撑系统。

6.提升国际航运服务能级。积极发挥外高桥港、洋山深水港、浦东空港国际枢纽港的联动作用，探索形成具有国际竞争力的航运发展制度和运作模式。积极发展航运金融、国际船舶运输、国际船舶管理、国际航运经纪等产业。加快发展航运运价指数衍生品交易业务。推动中转集拼业务发展，允许中资公司拥有或控股拥有的非五星旗船，先行先试外贸进出口集装箱在国内沿海港口和上海港之间的沿海捎带业务。支持浦东机场增加国际中转货运航班。充分发挥上海的区域优势，利用中资“方便旗”船税收优惠政策，促进符合条件的船舶在上海落户登记。在试验区实行已在天津试点的国际船舶登记政策。简化国际船舶运输经营许可流程，形成高效率的船籍登记制度。

### （四）深化金融领域的开放创新。

7.加快金融制度创新。在风险可控前提下，可在试验区内对人民币资本项目可兑换、金融市场利率市场化、人民币跨境使用等方面创造条件进行先行先试。在试验区内实现金融机构资产价格实行市场化定价。探索面向国际的外汇管理改革试点，建立与自由贸易试验区相适应的外汇管理体制，全面实现贸易投资便利化。鼓励企业充分利用境内外两种资源、两个市场，实现跨境融资自由化。深化外债管理方式改革，

促进跨境融资便利化。深化跨国公司总部外汇资金集中运营管理试点，促进跨国公司设立区域性或全球性资金管理中心。建立试验区金融改革创新与上海国际金融中心建设的联动机制。

8.增强金融服务功能。推动金融服务业对符合条件的民营资本和外资金融机构全面开放，支持在试验区内设立外资银行和中外合资银行。允许金融市场在试验区内建立面向国际的交易平台。逐步允许境外企业参与商品期货交易。鼓励金融市场产品创新。支持股权托管交易机构在试验区内建立综合金融服务平台。支持开展人民币跨境再保险业务，培育发展再保险市场。

#### （五）完善法制领域的制度保障。

9.完善法制保障。加快形成符合试验区发展需要的高标准投资和贸易规则体系。针对试点内容，需要停止实施有关行政法规和国务院文件的部分规定的，按规定程序办理。其中，经全国人民代表大会常务委员会授权，暂时调整《中华人民共和国外资企业法》、《中华人民共和国中外合资经营企业法》和《中华人民共和国中外合作经营企业法》规定的有关行政审批，自2013年10月1日起在三年内试行。各部门要支持试验区在服务业扩大开放、实施准入前国民待遇和负面清单管理模式等方面深化改革试点，及时解决试点过程中的制度保障问题。上海市要通过地方立法，建立与试点要求相适应的试验区管理制度。

### 三、营造相应的监管和税收制度环境

适应建立国际高水平投资和贸易服务体系的需要，创新监管模式，促进试验区内货物、服务等各类要素自由流动，推动服务业扩大开放和货物贸易深入发展，形成公开、透明的管理制度。同时，在维护现行税制公平、统一、规范的前提下，以培育功能为导向，完善相关政策。

#### （一）创新监管服务模式。

1.推进实施“一线放开”。允许企业凭进口舱单将货物直接入区，再凭进境货物备案清单向主管海关办理申报手续，探索简化进出境备案清单，简化国际中转、集拼和分拨等业务进出境手续；实行“进境检疫，适当放宽进出口检验”模式，创新监管技术和方法。探索构建相对独立的以贸易便利化为主的货物贸易区域和以扩大服务领域开放为主的服务贸易区域。在确保有效监管的前提下，探索建立货物状态分类监管模式。深化功能拓展，在严格执行货物进出口税收政策的前提下，允许在特定区域设立保税展示交易平台。

2.坚决实施“二线安全高效管住”。优化卡口管理，加强电子信息联网，通过进出境清单比对、账册管理、卡口实货核注、风险分析等加强监管，促进二线监管模式与一线监管模式相衔接，推行“方便进出，严密防范质量安全风险”的检验检疫监管模式。加强电子账册管理，推动试验区内货物在各海关特殊监管区域之间和跨关区便捷流转。试验区内企业原则上不受地域限制，可到区外再投资或开展业务，如有专项规定要求办理相关手续，仍应按照专项规定办理。推进企业运营信息与监管系统对接。通过风险监控、第三方管理、保证金要求等方式实行有效监管，充分发挥上海市诚信体系建设的作用，加快形成企业商务诚信管理和经营活动专属管辖制度。

3.进一步强化监管协作。以切实维护国家安全和市场公平竞争为原则，加强各有关部门与上海市政府的协同，提高维护经济社会安全的服务保障能力。试验区配合国务院有关部门严格实施经营者集中反垄断审查。加强海关、质检、工商、税务、外汇等管理部门的协作。加快完善一体化监管方式，推进组建统一高效的口岸监管机构。探索试验区统一电子围网管理，建立风险可控的海关监管机制。

## （二）探索与试验区相配套的税收政策。

4.实施促进投资的税收政策。注册在试验区内的企业或个人股东，因非货币性资产对外投资等资产重组行为而产生的资产评估增值部分，可在不超过5年期限内，分期缴纳所得税。对试验区内企业以股份或出资比例等股权形式给予企业高端人才和紧缺人才的奖励，实行已在中关村等地区试点的股权激励个人所得税分期纳税政策。

5.实施促进贸易的税收政策。将试验区内注册的融资租赁企业或金融租赁公司在试验区内设立的项目子公司纳入融资租赁出口退税试点范围。对试验区内注册的国内租赁公司或租赁公司设立的项目子公司，经国家有关部门批准从境外购买空载重量在25吨以上并租赁给国内航空公司使用的飞机，享受相关进口环节增值税优惠政策。对设在试验区内的企业生产、加工并经“二线”销往内地的货物照章征收进口环节增值税、消费税。根据企业申请，试行对该内销货物按其对应进口料件或按实际报验状态征收关税的政策。在现行政策框架下，对试验区内生产企业和生产性服务业企业进口所需的机器、设备等货物予以免税，但生活性服务业等企业进口的货物以及法律、行政法规和相关规定明确不予免税的货物除外。完善启运港退税试点政策，适时研究扩大启运地、承运企业和运输工具等试点范围。

此外，在符合税制改革方向和国际惯例，以及不导致利润转移和税基侵蚀的前提下，积极研究完善适应境外股权投资和离岸业务发展的税收政策。

#### 四、扎实做好组织实施

国务院统筹领导和协调试验区推进工作。上海市要精心组织实施，完善工作机制，落实工作责任，根据《方案》明确的目标定位和先行先试任务，按照“成熟的可先做，再逐步完善”的要求，形成可操作的具体计划，抓紧推进实施，并在推进过程中认真研究新情况、解决新问题，重大问题要及时向国务院请示报告。各有关部门要大力支持，积极做好协调配合、指导评估等工作，共同推进相关体制机制和政策创新，把试验区建设好、管理好。

附件：中国（上海）自由贸易试验区服务业扩大开放措施

#### 附件

#### 中国（上海）自由贸易试验区服务业扩大开放措施

##### 一、金融服务领域

1.银行服务（国民经济行业分类：J金融业——6620 货币银行服务）	
开放措施	（1）允许符合条件的外资金融机构设立外资银行，符合条件的民营资本与外资金融机构共同设立中外合资银行。在条件具备时，适时在试验区内试点设立有限牌照银行。 （2）在完善相关管理办法，加强有效监管的前提下，允许试验区内符合条件的中资银行开办离岸业务。
2.专业健康医疗保险（国民经济行业分类：J金融业——6812 健康和意外保险）	
开放措施	试点设立外资专业健康医疗保险机构。
3.融资租赁（国民经济行业分类：J金融业——6631 金融租赁服务）	
开放措施	（1）融资租赁公司在试验区内设立的单机、单船子公司不设最低注册资本限制。 （2）允许融资租赁公司兼营与主营业务有关的商业保理业务。

##### 二、航运服务领域

4.远洋货物运输（国民经济行业分类：G 交通运输、仓储和邮政业——5521 远洋货物运输）	
开放措施	（1）放宽中外合资、中外合作国际船舶运输企业的外资股比限制，由国务院交通运输部主管部门制定相关管理试行办法。 （2）允许中资公司拥有或控股拥有的非五星旗船，先行先试外贸进出口集装箱在国内沿海港口和上海港之间的沿海捎带业务。
5.国际船舶管理（国民经济行业分类：G 交通运输、仓储和邮政业——5539 其他水上运输辅助服务）	
开放措施	允许设立外商独资国际船舶管理企业。

### 三、商贸服务领域

6.增值电信（国民经济行业分类：I 信息传输、软件和信息技术服务业——6319 其他电信业务，6420 互联网信息服务，6540 数据处理和存储服务，6592 呼叫中心）	
开放措施	在保障网络信息安全的前提下，允许外资企业经营特定形式的部分增值电信业务，如涉及突破行政法规，须国务院批准同意。
7.游戏机、游艺机销售及服务（国民经济行业分类：F 批发和零售业——5179 其他机械及电子商品批发）	
开放措施	允许外资企业从事游戏游艺设备的生产和销售，通过文化主管部门内容审查的游戏游艺设备可面向国内市场销售。

### 四、专业服务领域

8.律师服务（国民经济行业分类：L 租赁和商务服务业——7221 律师及相关法律服务）	
开放措施	探索密切中国律师事务所与外国（港澳台地区）律师事务所业务合作的方式和机制。
9.资信调查（国民经济行业分类：L 租赁和商务服务业——7295 信用服务）	

开放措施	允许设立外商投资资信调查公司。
10.旅行社（国民经济行业分类：L 租赁和商务服务业——7271 旅行社服务）	
开放措施	允许在试验区内注册的符合条件的中外合资旅行社，从事除台湾地区以外的出境旅游业务。
11.人才中介服务（国民经济行业分类：L 租赁和商务服务业——7262 职业中介服务）	
开放措施	（1）允许设立中外合资人才中介机构，外方合资者可以拥有不超过 70%的股权；允许港澳服务提供者设立独资人才中介机构。 （2）外资人才中介机构最低注册资本金要求由 30 万美元降低至 12.5 万美元。
12.投资管理（国民经济行业分类：L 租赁和商务服务业——7211 企业总部管理）	
开放措施	允许设立股份制外资投资性公司。
13.工程设计（国民经济行业分类：M 科学研究与技术服务企业——7482 工程勘察设计）	
开放措施	对试验区内为上海市提供服务的外资工程设计（不包括工程勘察）企业，取消首次申请资质时对投资者的工程设计业绩要求。
14.建筑服务（国民经济行业分类：E 建筑业——47 房屋建筑业，48 土木工程建筑业，49 建筑安装业， 50 建筑装饰和其他建筑业）	
开放措施	对试验区内的外商独资建筑企业承揽上海市的中外联合建设项目时，不受建设项目的中外方投资比例限制。

## 五、文化服务领域

15.演出经纪（国民经济行业分类：R 文化、体育和娱乐业——8941 文化娱乐经纪人）	
开放措施	取消外资演出经纪机构的股比限制，允许设立外商独资演出经纪机构，为上海市提供服务。

16.娱乐场所（国民经济行业分类：R 文化、体育和娱乐业——8911 歌舞厅娱乐活动）

开放措施 允许设立外商独资的娱乐场所，在试验区内提供服务。

## 六、社会服务领域

17.教育培训、职业技能培训（国民经济行业分类：P 教育——8291 职业技能培训）

开放措施

- （1）允许举办中外合作经营性教育培训机构。
- （2）允许举办中外合作经营性职业技能培训机构。

18.医疗服务（国民经济行业分类：Q 卫生和社会工作——8311 综合医院，8315 专科医院，8330 门诊部  
（所））

开放措施

允许设立外商独资医疗机构。

注：以上各项开放措施只适用于注册在中国（上海）自由贸易试验区内的企业。

Translated version: for reference only.

**Circular of the State Council on the Framework Plan for the China (Shanghai) Pilot  
Free Trade Zone - Guo Fa [2013] No. 38**

To People's Government of all provinces, autonomous regions and municipalities directly under the Central Government and all ministries and commissions of and institutions directly under the State Council:

The State Council has approved and promulgated the "Framework Plan for the China (Shanghai) Pilot Free Trade Zone" (the "Framework Plan").

1. The establishment of China (Shanghai) Pilot Free Trade Zone is a strategic decision by the Central Government, and is a significant measure to boost China's reform and opening up under the new circumstances. The China (Shanghai) Pilot Free Trade Zone is critically meaningful and aims to expedite the functional transformation of the government, explore administrative innovation, stimulate trading and investment facilitation, and accumulate experience on achieving a more open China economy.

2. The Shanghai Municipal People's Government shall be responsible for the implementation of the Framework Plan. The China (Shanghai) Pilot Free Trade Zone shall explore the administration approach of "National Treatment" on investment permission and "Negative List", deepen the reform on administrative approval system, expedite the functional transformation of the government, and enhance the follow up supervision. The Shanghai Municipal People's Government shall expand the opening up of service industry, boost the opening up and innovation in financial sector, and establish a new pilot free trade zone with international standards in providing business and investment convenience, highly effective and efficient supervision and investor-friendly regulatory environment. The China (Shanghai) Pilot Free Trade Zone will serve as a "role model" nationwide in national system reforms and further opening up of the Chinese economy; if successful it will likely be expanded, and thus will contribute to the overall development of the economy. All governmental bodies shall support the coordination, guidance and evaluation entailed.

3. According to "The Decision of the Standing Committee of the National People's Congress on Authorizing the State Council to Temporarily Adjust the Administrative Examination and Approval of Relevant Laws in China (Shanghai) Pilot Free Trade Zone", relevant laws and

regulations shall be temporarily adjusted. Further details will be announced by the State Council under separate cover.

The Shanghai Municipal People's Government shall report to and consult the State Council on significant issues arising during the implementation of the Framework Plan.

The State Council

18 September 2013

## **Framework Plan for the China (Shanghai) Pilot Free Trade Zone**

Establishing the China (Shanghai) Pilot Free Trade Zone (hereinafter referred to as “FTZ”) is a major decision of the CPC Central Committee and the State Council and a major move for thoroughly implementing the spirit of the 18th National Congress of the CPC and promoting the reform and opening-up under the new situation. This Framework Plan is developed for the purpose of comprehensively and effectively boosting work on the FTZ.

### **General requirements**

With the important mission to accelerate the transformation of government functions, actively explore innovation in management modes, and promote trade and investment facilitation in a new China era and explore new channels and accumulate new experience for the deepening of reform and expansion of opening-up on a full scale, the FTZ a requirement of national strategy.

#### *Guidelines*

Holding high the great banner of socialism with Chinese characteristics and guided by Deng Xiaoping’s theories, the important thinking of the “Three Represents” and the Scientific Outlook on Development, the FTZ shall adhere to national strategy, further emancipate minds, make advancement through pilot programs, promote reform and development by opening-up, take the lead in establishing a system of cross-border investment and trade rules which meets the requirements of internationalization and law, become an important carrier for China to further integrate into economic globalization, develop an updated version of the Chinese economy, and contribute to the realization of China’s dream of great renaissance.

#### *Overall objectives*

During two to three years of reform through pilot programs, the FTZ shall accelerate the transformation of government functions, actively promote the expansion of opening-up of the service industry and reform of the foreign investment management system, vigorously develop the central economy and new trade forms, accelerate the exploration of convertibility under capital accounts and full opening-up of the financial service industry, explore the establishment of a categorized regulation mode based on the status of goods, strive to form a policy support system promoting investment and innovation, pay particular attention to cultivating an internationalized and regulated business environment, strive to become a pilot free trade zone

meeting international standards and featuring investment and trade facilitation, free convertibility of currencies, efficient and convenient regulation, and satisfactory legal environment, and explore new ideas and new channels for furthering opening-up and reform in China and better serving the whole country.

#### *Scope of implementation*

The FTZ covers four areas under special customs supervision: Shanghai Waigaoqiao Free Trade Zone, Shanghai Waigaoqiao Bonded Logistics Park, Yangshan Free Trade Port Area, and Shanghai Pudong Airport Free Trade Zone, and the scope of implementation and the scope of policies for pilot programs will be gradually expanded according to the progress of pilot programs and the needs for industry development and generation of a ripple effect, so as to form an interactive mechanism building Shanghai into a center of international economy, a center of finance, a center of trade, and a center of shipping.

#### **Major tasks and measures**

Adhering to the strategic requirement of “opening to the whole world and serving the whole country” and the strategic task of building Shanghai into “four centers,” the FTZ shall, through pilot programs, risk control, progressive advancement, and gradual improvement, combine the expansion of opening-up with system reform and combine the cultivation of functions with policy innovations, so as to form a framework of fundamental rules compatible with generally accepted international rules for investment and trade.

#### *Accelerating the transformation of government functions*

1. Deepening the reform of administrative systems. Efforts shall be made to accelerate the transformation of government functions, reform and innovate the administrative mode of government, actively explore and establish an administrative system compatible with the international high-standard system of investment and trade rules according to the requirements of internationalization and law, and promote changes in administration from focusing on ex ante approval to focusing on interim and ex post regulation. The FTZ shall establish a service mode featuring “one-off acceptance, integrated approval, and efficient operation,” improve information network platforms, and realize a coordinated management mechanism among different departments. The FTZ shall establish a comprehensive assessment mechanism for

tracking, regulating and gathering industry information, and enhance the tracking, administration and supervision of the whole process of business activities outside the FTZ of enterprises registered in the FTZ. The FTZ shall establish a centralized and uniform system of market regulation and integrated law enforcement to realize efficient supervision in fields such as quality and technical regulation, food and drug regulation, intellectual property rights, industry and commerce, and taxation, and encourage the involvement of social forces in market supervision. The FTZ shall enhance the transparency of administration, and improve an information disclosure mechanism that values participation of investors and conforms to international rules. The FTZ shall improve the mechanism for effectively protecting the rights and interests of investors, ensure fair competition among various investors, and allow qualified foreign investors to freely transfer their investment returns. Dispute resolution mechanisms for intellectual property rights, such as mediation and aid, shall be established.

*Expanding the opening-up of investment fields*

2. Expanding the opening-up of the service industry. The fields of financial services, shipping services, commerce and trade services, professional services, cultural services, and social services shall be selected for expanded opening-up (see Annex for a detailed list of opening-up), and access restriction measures (except for banking institutions and information and communication services), such as investors' qualifications, equity ratio restrictions, and restrictions on business scope, shall be suspended or cancelled, so as to create a market environment favorable to the equal access of various investors.

3. Exploring and establishing a "negative list" administrative mode. The FTZ shall, learning from generally accepted international rules, provide pre-access national treatment for foreign investment on a trial basis, research and develop a negative list for foreign investment in the FTZ inconsistent with national treatment, and reform the administrative mode of foreign investment. For fields outside the negative list, under the principle of consistency in policies for both foreign-invested enterprises and domestic enterprises, the approval system for foreign-invested projects shall be replaced with the recordation system (unless the State Council reserves the approval requirement for domestic investment projects), and the Shanghai Municipal People's Government shall be responsible for recordation administration; the approval of contracts and bylaws of foreign-invested enterprises shall be replaced with recordation administration by the Shanghai Municipal People's Government, and relevant

formalities after recordation shall be undergone according to the relevant provisions in China; the industrial and commercial registration shall be linked with the reform of the commercial registration rules, and the registration process shall be gradually optimized; the national security review system shall be improved, and a pilot program of national security review related to foreign investment shall be implemented in the FTZ to build a safe and efficient open economic system. A foreign investment administrative system in line with international standards shall be gradually formed on the basis of experience from pilot programs.

4. Building an overseas investment promotion system. The FTZ shall reform the overseas investment administration mode, apply primarily the filing system to overseas investment, and apply the filing system to general overseas investment projects, and the Shanghai Municipal People's Government shall be responsible for recordation administration, so as to improve facilitation of overseas investment. The FTZ shall innovate in the investment service promotion mechanism, strengthen the ex post administration and services regarding overseas investment, form an information monitoring platform shared by multiple departments, and effectively conduct the statistics and annual inspection of direct overseas investment. Various investors in the FTZ shall be supported in making overseas investment in multiple forms. The formation of professional project companies to make overseas equity investment shall be encouraged in the FTZ, and qualified investors shall be supported in establishing a fund of funds for offshore equity investment.

*Promoting the transformation of trade development modes*

5. Promoting the transformation and upgrading of trade. The FTZ shall actively cultivate new trade forms and functions to form new competitive advantages in foreign trade focusing on technology, brand, quality and service and accelerate the rise of China in the global trade value chain. Multinational companies shall be encouraged to establish Asian-Pacific regional headquarters and operation centers integrating trade, logistics, settlement, and other functions. The pilot program of the international trade settlement center shall be further implemented to expand the functions of special accounts in cross-border receipt and payment and financing under trade in services. Enterprises in the FTZ shall be supported in the development of offshore business. Enterprises shall be encouraged to conduct international and domestic trade according to an overall plan to realize the integrated development of domestic and foreign trade. Efforts shall be made to explore the establishment of international bulk commodity trading and

resource allocation platforms in the FTZ for the international trade of energy products, basic industrial raw materials, and bulk agricultural products. The pilot program of futures bonded delivery shall be expanded and improved to expand warehouse receipt pledge financing and other functions. The construction of an international cultural trade base shall be accelerated. The development of outsourcing services in biological medicine, software information, management consulting, and data services, among others, shall be promoted. Various financial leasing companies shall be allowed and encouraged to establish project subsidiaries in the FTZ to provide domestic and foreign leasing services. The establishment of third-party inspection and identification institutions shall be encouraged, and their test results shall be accepted according to international standards. Pilot programs of domestic and foreign high-tech and high value-added maintenance services shall be implemented. The FTZ shall accelerate the cultivation of cross-border e-commerce service functions, and implement pilot programs to establish corresponding support systems in Customs supervision, inspection and quarantine, tax rebate, cross-border payment, and logistics, among others.

6. Enhancing the level of international shipping services. The FTZ shall maximize the interactive roles of the Waigaoqiao Port, Yangshan Deepwater Port, and Pudong International Airport, and explore how to form an internationally competitive shipping development system and operation mode. The FTZ shall actively develop shipping finance, international ship transportation, international ship management, international shipping brokerage, and other industries. The development of the shipping freight index derivatives trading business shall be accelerated. The development of transit and LCL (less than container load) business shall be promoted, ships not flying five-star flags which are owned or controlled by Chinese-invested companies shall be allowed to engage in the coastal carriage of foreign trade import and export containers between domestic coastal ports and the Shanghai Port on a trial basis. The Pudong airport shall be supported in increasing international flights for cargo transit. The FTZ shall maximize the regional advantages of Shanghai, and using preferential tax policies for Chinese-funded ships flying a “flag of convenience” to encourage qualified ships to register in Shanghai. The international ship registration policies already implemented in a pilot program in Tianjin shall be implemented in the FTZ. The international shipping business licensing procedures shall be simplified to form an efficient ship registry system.

*Deepening opening-up and innovations in the financial field*

7. Accelerating innovation in the financial system. Conditioned upon controllable risks, pilot programs may be implemented for RMB convertibility under capital accounts, interest rate liberalization in the financial market, and RMB cross-border use, among others, in the FTZ. Liberalization of pricing on the assets side of financial institutions shall be achieved in the FTZ. Efforts shall be made to explore the reform of foreign exchange administration with an international angle and to establish a foreign exchange administrative system adapted to the FTZ to comprehensively achieve trade and investment facilitation. Enterprises shall be encouraged to make full use of both domestic and foreign resources and markets to achieve liberalization of cross-border financing. The foreign debt administration mode shall be further reformed to promote cross-border financing facilitation. The pilot program of centralized use and management of foreign exchange funds of headquarters of multinational companies shall be further implemented, and multinational companies shall be encouraged to establish regional or global fund management centers. Efforts shall be made to establish a mechanism for the interaction between financial reforms and innovation in the FTZ and the construction of the Shanghai international financial center.

8. Enhancing financial service functions. The FTZ shall promote the full opening-up of the financial services industry to qualified private capital and foreign-invested financial institutions, and support the formation of foreign-invested banks and Chinese-Foreign equity joint venture banks in the FTZ. The financial market shall be allowed to establish international trading platforms in the FTZ. Overseas enterprises shall be gradually allowed to participate in commodity futures trading. Product innovation in the financial market shall be encouraged. Equity trust trading institutions shall be supported in establishing integrated financial service platforms in the FTZ. The cross-border RMB reinsurance business shall be supported to foster and develop the reinsurance market.

#### *Improving rules in the legal system*

9. Improving legal guarantees. The formation of a high-standard system of investment and trade rules meeting the needs of development of the FTZ shall be accelerated. In view of the contents of pilot programs, if the implementation of certain provisions of the relevant administrative regulations and documents of the State Council should be suspended, the prescribed procedures shall be followed. In particular, the relevant administrative approval items prescribed in the Law of the People's Republic of China on Foreign-Invested Enterprises, the Law of the

People's Republic of China on Chinese-Foreign Equity Joint Ventures, and the Law of the People's Republic of China on Chinese-Foreign Contractual Joint Ventures shall be temporarily adjusted, and such adjustments shall be put into trial implementation during the three years from October 1, 2013. All departments shall provide support for the FTZ to further implement pilot reform programs regarding the expansion of opening-up of the service industry, application of pre-access national treatment and negative list administrative mode, among others, and address issues on legal guarantee in implementing pilot programs in a timely manner. The Shanghai Municipal People's Government shall, through local legislation, establish administrative rules for the FTZ meeting the requirements of pilot programs.

### **Creating a corresponding legal environment for regulation and taxation**

To meet the requirements for establishing a high-standard international investment and trade service system, efforts shall be made to innovate regulatory modes, promote the free movement of goods, services, and other various elements in the FTZ, boost the expansion of opening-up of the service industry and further development of trade in goods, and the forming of open and transparent administrative rules. Under the premise of maintaining the fairness, unity and standardization of the existing tax system, the relevant policies shall be improved based on functional cultivation.

#### *Innovating supervision service modes*

Promoting the "release of the first line". Enterprises shall be allowed to directly carry goods into the FTZ based on import manifests, and then undergo declaration formalities with the competent Customs authority based on the recordation list of imported goods. Efforts shall be made to explore the simplification of the entry and exit recordation lists and the entry and exit formalities for international transit, LCL, split shipping, and other business. The mode of "entry quarantine and properly relaxed import and export inspection" shall apply, and innovation shall be made in the regulatory techniques and methods. The FTZ shall explore the establishment of a relatively independent area for trade in goods focusing on trade facilitation and an area for trade in services focusing on the expansion of opening-up of the service field. Conditioned upon ensuring effective regulation, the FTZ shall explore the establishment of a model of categorized regulation according to the status of goods. Function expansion shall be further conducted, and bonded exhibition and trading platforms shall be allowed to be set up in particular areas under the premise of strict implementation of tax policies for import and export of goods.

Resolutely exercising “safe and efficient control over the second line”. Efforts shall be made to optimize the administration of checkpoints, enhance the electronic information networking, strengthen regulation through the crosschecking of entry and exit lists, account book management, cargo verification and endorsement at checkpoints, and risk analysis, among others, to promote the connection between the regulatory models for the first and second lines, and apply the inspection and quarantine regulatory model of “easy entry and exit but with strict control of quality and safety risks”. The management of electronic account books shall be strengthened to promote the convenient and fast movement of goods in the FTZ between areas under special customs supervision and across different Customs territories. Enterprises in the FTZ are generally not subject to geographic restrictions, and may make re-investment or conduct business outside of the FTZ, but shall undergo the relevant formalities as required by any special provisions. The connection of the business operation information of enterprises and the regulatory system shall be boosted. Effective regulation shall be implemented through risk monitoring, third-party management, and security deposit requirements and the role of the construction of Shanghai’s integrity system shall be maximized, to accelerate the formation of the rules for enterprise business integrity management and exclusive jurisdiction over their business activities.

Further strengthening regulatory cooperation. The collaboration between relevant departments and the Shanghai Municipal People’s Government shall be strengthened under the principle of effectively safeguarding national security and fair market competition to improve the service guarantee for maintaining economic and social security. The FTZ shall assist the relevant departments of the State Council in strictly implementing anti-monopoly examination regarding business concentration. Cooperation with the administrative departments of Customs, quality inspection, industry and commerce, taxation, and foreign exchange, among others, shall be strengthened. The improvement of the integrated regulatory model shall be accelerated, and the establishment of a unified and efficient port regulation institution shall be boosted. The FTZ shall explore unified electronic fence management, and establish a Customs supervision mechanism with controllable risks.

*Exploring supporting tax policies for the FTZ.*

Implementing tax policies promoting investment. For enterprises registered in the FTZ or individual shareholders, the income tax on the appraised asset appreciation arising from

external investment of non-monetary assets and other asset restructurings may be paid by installments over five years. For the rewards granted by enterprises in the FTZ to their high-end talents and much-needed talents in a form such as shares or a percentage of capital contribution, the policy of payment of individual income tax on equity incentives installments as tested in Zhongguancun and other areas shall apply.

Implementing tax policies promoting trade. Financial leasing enterprises registered in the FTZ or project subsidiaries established in the FTZ by financial leasing companies shall be covered by the pilot program of export tax rebate for finance leasing. Domestic leasing companies registered in the FTZ or project subsidiaries established in the FTZ by leasing companies shall enjoy relevant preferential import VAT policies for airplanes with an empty weight of 25 tons or more purchased abroad with the approval of the relevant authorities of the State and leased to domestic airline companies by them. For goods produced or processed by enterprises established in the FTZ and sold domestically through the “second line,” the import VAT and consumption tax shall be levied as legally required. Upon application of enterprises, the policy of levying Customs duties on goods for domestic sale according to the imported materials or parts or according to the actual inspection declaration status shall be implemented on a trial basis. Under the current policy framework, necessary goods such as machines and other equipment imported by production enterprises and producer service enterprises in the FTZ shall be exempted from import tax, except for goods imported by life service enterprises and other enterprises and goods which may not enjoy tax exemption as specified in the laws, administrative regulations and other relevant provisions. The pilot policy of tax rebate at the port of departure shall be improved, and the expansion of the coverage of pilot programs for places of departure, carriers, and means of transport, among others, shall be researched in a timely manner.

In addition, conditioned upon consistency with the direction of tax reform and international practice and prevention of transfer of profits and erosion of the tax base, tax policies adapted to boost the development of overseas equity investment and offshore business shall be researched and improved.

### **Solidly conducting organization and implementation**

The State Council shall make overall arrangements to lead and coordinate work on the FTZ. The Shanghai Municipal People’s Government shall elaborately organize implementation,

improve working mechanisms, assign working responsibilities, and, according to the targets and pilot programs specified in the Framework Plan and the requirements of “implementing those with mature conditions with gradual improvement,” develop operable specific plans, speed up implementation, carefully study new situations and solve new problems during implementation, and report any major issues to the State Council in a timely manner for instructions. All relevant departments shall provide strong support, and actively conduct coordination, cooperation, guidance, assessment, and other work to jointly promote innovation in relevant systems, mechanisms, and policies and effectively build and administer the FTZ.

## **Attachment: Measures for the Expansion of Opening-Up of the Service Industry in the China (Shanghai) Pilot Free Trade Zone**

### **1. Financial services**

1. Banking service (Classification of National Economic Industries: J Finance industry 6620 Monetary banking service)

Opening up measures

(1) Qualified foreign financial institutions will be allowed to set up wholly foreign-owned banks and Sinoforeign equity joint venture banks with eligible private capital within the China (Shanghai) Pilot Free Trade Zone. Restricted license banks will be allowed to be incorporated under certain conditions.

(2) Qualified Chinese banks will be allowed to conduct offshore business under the condition of improving related regulations and enhancing supervision.

2. Specialized health and medical insurance (Classification of National Economic Industries: J Finance industry 6812 Health and accident insurance) Opening up measures Setup of foreign invested specialized health and medical insurance institutions will be allowed.

3. Financial leasing (Classification of National Economic Industries: J Finance industry 6631 Finance leasing service)

Opening up measures

(1) The minimum registered capital requirements for a project company (i.e. single-ship/aircraft company) set up by financial leasing companies within the China (Shanghai) Pilot Free Trade Zone will be removed.

(2) Financial leasing companies will be allowed to conduct commercial factoring that are related to its primary businesses.

### **2. Transportation services**

4. Ocean transportation (Classification of National Economic Industries: G Transportation, warehousing and postal industry 5521 Ocean transportation)

## Opening up measures

(1) Limitations on foreign participation in Sino-foreign equity joint venture and Sino-foreign cooperative joint venture international shipping enterprises will be relaxed. The transport administrative authorities of the State Council shall be in charge of the rulemaking.

(2) Foreign ships owned or indirectly owned by Chinese-invested companies are allowed to pilot the coastal shipping between domestic coastal ports and Shanghai port.

5. International ship management (Classification of National Economic Industries: G Transportation, warehousing and postal industry 5539 Other water transportation auxiliary service) Opening up measures Incorporation of wholly foreign-owned ship management enterprises will be allowed.

### **3. Commerce and trade services**

6. Value-added telecommunications (Classification of National Economic Industries: I Information transmission, software and information technology service 6319 Other telecommunication service, 6420 Internet information service, 6540 Data processing and storage service, 6592 call centre) Opening up measures Subject to the network information security, qualified FIEs will be allowed to engage in specific value added telecommunication services. Approval by the State Council is required if the limitations exist in current administrative regulations.

7. Entertainment and gaming consoles sales and service (Classification of National Economic Industries: F Wholesale and retailing 5179 Wholesale of other mechanical and electronic products)

FIEs will be allowed to engage in the manufacturing and sales of entertainment and gaming consoles. The consoles with content passing the censorship by the culture administrative authorities will be allowed to be sold in the domestic market.

#### **4. Professional services**

8. Lawyer service (Classification of National Economic Industries: L Leasing and business service 7221 Lawyers and related legal service)

Opening up measures

Cooperative mechanism between Chinese and foreign law firms will be explored.

9. Credit inquiry (Classification of National Economic Industries: L Leasing and business service 7295 Credit service)

Opening up measures

Incorporation of foreign invested credit information companies will be allowed.

10. Tourism companies (Classification of National Economic Industries: L Leasing and business service 7271 Travel agency service)

Opening up measures

Sino-foreign equity joint venture tourism companies registered in the China (Shanghai) Pilot Free Trade Zone will be allowed to engage in overseas tourism business activities, with the exception of Taiwan.

11. Human resources service (Classification of National Economic Industries: L Leasing and business service 7262 Professional intermediary service)

Opening up measures

(1) Setup of Sino-foreign equity joint venture human resources agencies will be allowed with the foreign participation at 70% or below. Investors from Hong Kong and Macau will be allowed to set up wholly foreign-owned human resources agencies.

(2) The minimum registered capital for foreign invested human resources agencies will be reduced from USD300,000 to USD125,000.

12. Investment management (Classification of National Economic Industries: L Leasing and business service 7211 Headquarter's management)

Opening up measures

Incorporation of foreign-invested joint-stock holding companies will be allowed.

13. Engineering design (Classification of National Economic Industries: M Scientific research and technology service company 7482 Engineering investigation and design)

Opening up measures

Foreign-invested engineering design (excluding engineering survey) companies registered in the China (Shanghai) Pilot Free Trade Zone may be waived from the requirement to provide the investor's previous project records on initial application of the relevant qualifications for those applicants providing services in Shanghai.

14. Construction service (Classification of National Economic Industries: E Construction industry 47 Housing construction industry, 48 Civil Engineering Construction, 49 Construction and Installation, 50 Building decoration and other construction)

Opening up measures

Wholly foreign-owned construction enterprises registered within the China (Shanghai) Pilot Free Trade Zone will be allowed to conduct Sino-foreign joint construction projects in Shanghai regardless of the extent of foreign participation in the project.

## **5. Cultural services**

15. Entertainment artist agency (Classification of National Economic Industries: R Culture, sports and entertainment 8941 Culture and entertainment agency)

Opening up measures

The limitation on foreign participation in entertainment artist agencies will be removed. A wholly foreign owned entertainment artist agency will be allowed to set up to provide service in Shanghai.

16. Entertainment facilities (Classification of National Economic Industries: R Culture, sports and entertainment 8911 ballroom recreation activities)

Opening up measures

Wholly foreign-owned entertainment facilities will be allowed to set up and provide service in the China (Shanghai) Pilot Free Trade Zone.

## **6. Public services**

17. Education and training, vocational skills training (Classification of National Economic Industries: P Education 8291 Vocational skills training)

Opening up measures

(1) Establishment of Sino-foreign cooperative joint venture education and training institutions will be allowed.

(2) Establishment of Sino-foreign cooperative joint venture vocational skills training institutions will be allowed.

18. Medical service (Classification of National Economic Industries: Q Health and social work 8311 General hospital, 8315 Specialized hospital, 8330 Out-patient department)

Opening up measures

Establishment of wholly foreign-owned medical institutions will be allowed.

Note: The opening up measures above only applicable to the enterprises registered within the China (Shanghai) Pilot Free Trade Zone.

**Sources:**

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**English Version for Reference:**

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[http://www.china.org.cn/business/2013-10/16/content\\_30309892.htm](http://www.china.org.cn/business/2013-10/16/content_30309892.htm)
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