

# Special Economic Zones in China and WTO: Bleak or Bright Future?

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## Abstract

Only recently, in September 29, 2013, an experimental free trade zone was launched in Shanghai described as one of the most potentially significant developments in over three decades. Some even called it “the next Shenzhen”. The author elaborates on the evolution of foreign trade and the accomplishments of Special Economic Zones (SEZs) defying the overall liberalization process initiated by China’s accession to the World Trade Organization (WTO). By also taking a look at the Shanghai pilot Free Trade Zone (FTZ), the author concludes that despite China’s implementation of the national treatment principle, the SEZs continue to be of high significance for foreign investors as well as for the rest of China.

## I. Introduction – The rise of SEZs and the state of the art

In 1979, when China was in dire poverty and it was realized that the Chinese economy would be on the verge of collapse if the centrally planned economy remained unchanged, the bold reformer DENG Xiaoping introduced the Open Door policy, heralding a shift in economic policy. The establishment of Special Economic Zones (SEZs)<sup>2</sup> was one of the major instruments to allow for elements of market economy in the still predominant centrally planned economy and to promote economic and political decentralization. In 1979, the central government decided under DENG Xiaoping that the two geographically distinct provinces, Fujian and Guangdong Province, should pursue reforms “one step ahead” of other regions in the country, allowing them to adopt “special policies” and to implement “flexible measures”.<sup>3</sup> Since 1980 the People’s Republic of China (PRC) has established SEZs in Shenzhen, Zhuhai and Shantou (Guangdong Province) and Xiamen (Fujian Province). In 1988, the entire

island province of Hainan was designated a SEZ. The idea was to first experiment liberalization policies on a limited scale, only permitting a minimum of government intervention, and when the policies proved successful, the government would spread them throughout other regions of the country (so called spill-overs to the local economy).<sup>4</sup> Furthermore, the SEZs were seen as a gateway to the world,<sup>5</sup> overcoming the long existing reluctance to international trade by attracting foreign direct investments (FDI). The zones were largely freed from import and export restrictions, thus foreign trade was encouraged. The SEZs achieved a tremendous success: In 1981, the four zones accounted for more than 59.8 percent of total FDI in China.<sup>6</sup> In 1984, as one of the spillover-effects of the SEZs, the central authorities further opened 14 coastal cities to overseas investment, creating variants of SEZs.<sup>7</sup> Due to the combination of favorable policies and an optimum mixture of location-specific production factors, China experienced unprecedented growth rates.

Today, 12 years later after China’s accession to the World Trade Organization (WTO) in 2001, the foreign trade and investment regime in China has experienced profound change. China has achieved its integration into the global economy through creating a system that is far more liberalized, open and transparent than before its accession to the WTO in 2001. Against this background questions have been raised as to whether the SEZs are still necessary. Are they still “special” considering that China has geared up to the WTO challenges by fulfilling the WTO compatibility of its laws according to its commitments laid down in the accession protocol<sup>8</sup>, thus rendering the SEZs obsolete? However, only recent-

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<sup>2</sup> 经济特区.

<sup>3</sup> LIN Yifu Justin/LIU Mingxing/TAO Ran, Deregulation, Decentralization, and China’s Growth in Transition, in: David Kennedy/Joseph E. Stiglitz (eds.), Law and Economics with Chinese Characteristics – Institutions for Promoting Development in the Twenty-First Century, Oxford 2013, p. 472.

<sup>4</sup> See more closely WU Weiping, Pioneering Economic Reform in China’s Special Economic Zones, Aldershot, Great Britain 1999, pp. 12, 13.

<sup>5</sup> See David S.G. Goodman, Deng Xiaoping and the Chinese Revolution, A political biography, New York 1994, p. 95.

<sup>6</sup> YEUNG Yue-man/Joanna Lee/Gordon Kee, China’s Special Economic Zones at 30, Eurasian Geography and Economics, 50 (2009), p. 224.

<sup>7</sup> See more detailed ZENG Douglas Zhilua, How do Special Economic Zones and Industrial Clusters Drive China’s Rapid Development?, in: ZENG Douglas Zhilua (ed.) Building Engines for Growth and Competitiveness in China. Experience with Special Economic Zones and Industrial Clusters, p. 10, The World Bank, 2010.

<sup>8</sup> Protocol on the Accession of the People’s Republic of China, which incorporates by reference selected paragraphs of Report of the Working Party on the Accession of China and which shall be an integral part of the WTO Agreement (I.1.1 of the Protocol).

ly, in September 29, 2013, the China (Shanghai) Pilot Free Trade Zone (FTZ)<sup>9</sup> was launched, aiming at further liberalizing foreign investments by relaxing restrictions within the FTZ, simplifying approval requirements and promoting convertibility of the Renminbi (RMB). It builds upon the concept of SEZs which suggests that SEZs have not lost their edges – have they?

## II. Opening to the outside world – The accumulation of FDI

The uniform application of the WTO-rules which allegedly led to a diminishing effect of the privileged status and of the “special” characteristics of the SEZs should be viewed in the light of the dynamic development of the Chinese legal development starting in 1978 and resulting eventually in China’s WTO accession. This facilitates the understanding of the creeping extension of differential treatment between Chinese nationals and foreigners.<sup>10</sup>

When entering the DENG Xiaoping-era in 1978, a legal system was almost non-existent: In the centrally planned economy which prevailed under MAO Zedong, economic plans and administrative orders had been enacted instead of laws.<sup>11</sup> Besides, during the Cultural Revolution (1966–1978), the ideology of authoritarian Maoist communism prevailed, namely that the ruler is supreme rather than the law being supreme.<sup>12</sup>

However, in the first decade of the introduction of market economy elements, forwarded by DENG Xiaoping, numerous laws were enacted in order to create the essential legal basis for liberalizing the economic conditions. The main objective was to spur FDI through multinational companies since the country was in urgent need of foreign capital which had not been accumulated during the highly centrally planned, socialist era of MAO Zedong.<sup>13</sup> Foreign companies entering the market trigger competition and push for efficiency improvements, necessary to keep a company’s market shares. Domestic companies learn from foreign companies about marketing and organizational skills, process technology as well as being educated about foreign markets, thus in-

creasing the overall “know-how” which is required for subsequent imitation. Laws were enacted which spell out a set of categories of foreign investment vehicles such as the Chinese-foreign equity joint venture, the Chinese-foreign contractual joint venture and the wholly foreign-owned enterprise.<sup>14</sup> These laws which provide organizational forms for foreigners to invest in China but also the Law of the PRC on Economic Contracts Involving Foreign Interests (Foreign Economic Contract Law)<sup>15</sup> and other laws relating to taxation or alternative dispute resolution denote that no longer only pure domestic matters play a role. Rather, a great interest in the encouragement of foreign trade was shown. The government provided foreign invested enterprises (FIEs) with tax benefits and other privileges which were not available to domestic enterprises. This is especially reflected by the establishment of SEZs: On August 26, 1980, the Standing Committee of the National People’s Congress approved and put into effect the Regulations on Special Economic Zones in Guangdong Province<sup>16</sup> (Guangdong Regulations), which is China’s first legislation on Special Economic Zones distinct from legislation applicable elsewhere in China, and which marked the beginning of regional experimentation<sup>17</sup> of market economy elements and further opening to the outside world by attracting foreign capital through numerous preferential policies, such as reduced enterprise income tax rates or land use rights. This governmental initiative indicated a drastic departure from the long existing centrally planned economy which was wholly ad odds with the free market ethos of the WTO.

However, the overall investment environment was still rather nontransparent, lacking structured approaches or advanced planning. Consequently, the larger accessibility of business fields was reserved to contractual business undertakings between the foreign investor and a local Chinese party (joint-venture companies) which were subject to the so called PRC Guidance Catalogue, a state ruled plan that contains certain requirements for investment in specific sectors.<sup>18</sup> Concerning the service sector, foreign service-providers were not encour-

<sup>9</sup> 中国（上海）自由贸易试验区。

<sup>10</sup> See also WANG Guiguo, Evolution of the Chinese Legal System in the Globalized World, online available at <<http://www.juridicas.unam.mx/sisjur/dercompa/pdf/2-102s.pdf>>, visited January 5<sup>th</sup>, 2014.

<sup>11</sup> CHEN Albert H.Y., The Developing Theory of Law and Market Economy in Contemporary China, in: WANG Guiguo/WEI Zhiying (eds.), Legal Developments in China – Market Economy and Law, Hong Kong, Singapore, 1996, p. 13.

<sup>12</sup> See Graham Mayeda, A Normative Perspective on Legal Harmonization: China’s Accession to the WTO, Zeitschrift für Chinesisches Recht (ZChinR) 13 (2006), p. 187.

<sup>13</sup> See GUO Sujian, Chinese Politics and Government – power, ideology, and organization, London, New York 2013, p. 250.

<sup>14</sup> For further details concerning investment vehicles see BU Yuanshi, Einführung in das Recht Chinas, München 2009, pp. 198–201.

<sup>15</sup> Adopted at the 10<sup>th</sup> Session of the Standing Committee of the 6<sup>th</sup> NPC on 21 March 1985 and became effective as of 1 July 1985.

<sup>16</sup> An English version is available at <<http://www.asianlii.org/cn/legis/cen/laws/rosezipp554/>>, visited January 3<sup>rd</sup>, 2014; this legislation was first drafted by the Guangdong Provincial People’s Congress, see more closely Ann Fenwick, Evaluating China’s Special Economic Zones, 2 Int’l Tax & Bus. Law 376 (1984), p. 379.

<sup>17</sup> See also LIN Justin Yifu/TAO Ran/LIU Mingxing, Decentralization, Deregulation and Economic Transition in China, p. 14, online available at <<http://sticerd.lse.ac.uk/dps/decentralisation/China.pdf>>, visited January 4<sup>th</sup>, 2014.

<sup>18</sup> See more detailed Julia Ya Qin, The impact of WTO accession on China’s legal system: Trade, investment and beyond, Wayne State University Research paper, No. 07–15, pp. 13–14.

aged, nor were those, who were operating in China treated the same ways as the Chinese service providers: Foreign bank branches and Chinese/foreign joint banks could only be set up in a SEZ and in Technical Development Zones<sup>19</sup>.

### III. Examples of preferential policies before China's accession to the WTO

An investor who decides to invest in a certain area of China will have to think about some basic issues<sup>20</sup> as to what types of investment vehicles are permitted in the area and what type of business to operate. But also questions concerning the availability of real estate and regarding potential preferential tax treatment matter. Furthermore, a crucial aspect for FDI is whether the investor has to face cumbersome bureaucratic burdens in terms of required government approvals. FIEs located in a SEZ profited from a number of investment incentives:

#### 1) Central government's promotion

The central government attributed great significance to the development of Guangdong Province. Thus, the local governments were granted more flexibility in carrying out foreign trade and accelerating the development of local economies.<sup>21</sup> In 1992, the central government duly conferred legislative power on Shenzhen SEZ and provided the Shenzhen Municipal People's Congress as well as its Standing Committee with clear authority to make rules in accordance with specific situations and actual needs.<sup>22</sup>

#### 2) Corporate system

In the initial phase of the establishment of SEZs, the majority of enterprises in China were state-owned although gradually privately owned companies were introduced.<sup>23</sup> However, it was in the SEZs where the foreign investment vehicles were set up and "tested". According to Article 1 of the Guang-

dong Regulations, any form of business can be established under the SEZ regulations including a business with 100 percent foreign ownership. The latter is fairly striking because outside the zones, due to the prevailing centrally planned environment that only gradually underwent economic reforms of introducing market economy elements: mostly joint ventures were established in order to cope with the opaque investment environment. The SEZs are characterized by their explicit goal of comprehensiveness in terms of their wide scope of investment, manifest in Article 4 of the Guangdong Regulations which invites foreign capital to participate in "industry, agriculture, animal husbandry, aquaculture, tourism, housing ..." This stands in harsh contrast to other zones with preferential treatment, i.e. export processing zones which confine themselves largely to labor-intensive industrial production.<sup>24</sup> Unlike the Law of the PRC on Chinese-Foreign Equity Joint Ventures (Joint Venture Law) governing Sino-foreign joint ventures<sup>25</sup> elsewhere in China, which required 25% minimum foreign equity (Article 4), the Guangdong Regulations contain no minimum foreign-equity requirements. Furthermore, there is no stipulation in the Regulations that joint ventures in the SEZs must first receive authorization by the central-level Foreign Investment Commission, a mandatory procedure for all joint ventures elsewhere in China (see Article 3 of the Joint Venture Law). It is quite conceivable that bureaucracy was gradually streamlined in order to provide for efficient performance. According to Article 10 of the Regulations, the investors may operate their enterprises independently in the special zones. This illustrates on the one side the high degree of decision-making power of enterprises in the SEZs. On the other side, it also reflects the great political and economic autonomy given to the SEZs which enabled them to pursue new policies and development measures considered necessary to vitalize the economy. The Chinese authorities of local governments in the SEZs had independent power to implement development plans, and to examine and endorse investment projects.<sup>26</sup>

#### 3) Preferential taxation

For instance, according to Article 14 of the Guangdong Regulations, the incorporate income tax rate for the Guangdong Province SEZs was 15%,

<sup>19</sup> See Regulations governing foreign banks and joint Chinese-foreign banks in Special Economic Zones of the People's Republic of China, promulgated by the State Council on April 2, 1985.

<sup>20</sup> See SANG Bin Xue, Pudong: Another Special Economic Zone in China? - An Analysis of the Special Regulations and Policy for Shanghai's Pudong New Area, 14 Nw. J. Int'l L. & Bus. 130 (1993-1994), pp. 138, 139.

<sup>21</sup> YUAN Yiming/GUO Hongyi/XU Hongfei et al., China's First Special Economic Zone: The Case of Shenzhen, in: ZENG Douglas Zhilua, Building Engines for Growth and Competitiveness in China, p.73.

<sup>22</sup> Decision of the Standing Committee of the National People's Congress on Authorizing the People's Congress of Shenzhen City and its Standing Committee and People's Government of Shenzhen City to formulate Regulations and Rules respectively for implementation in the Shenzhen Special Economic Zone, adopted at the 26th meeting of the Standing Committee of the Seventh National People's Congress on July 1, 1992, English version available at <<http://www.asianlii.org/cn/legis/cen/laws/dotsconoatpcoscaiscatpgostrfrarriis2318/>>, visited January 3rd, 2014.

<sup>23</sup> See Daniel C.K. Chow, The legal system of the People's Republic of China in a nutshell, Minnesota, USA 2003, pp. 22, 23.

<sup>24</sup> Concerning the difference between Export Processing Zones and SEZs see WU Weiping (supra note 4), p. 14.

<sup>25</sup> Law of the People's Republic of China on Chinese-Foreign Equity Joint Ventures, adopted at the Second Session of the Fifth National People's Congress on July 1, 1979 and promulgated by Order No.7 of the Chairman of the Standing Committee of the National People's Congress on July 8, 1979, online available at <<http://www.china.org.cn/english/DAT/214773.htm>>, visited January 4th, 2014.

<sup>26</sup> WANG Weiguo, China's Experience in Legislation on Special Economic Zones, China Law, 2011, issue 1, p. 96.



far below the 33% rate imposed on joint ventures outside the zones (Article 5 of the Income Tax Law of the PRC for Enterprises with Foreign Investment and Foreign Enterprises<sup>27</sup>). This chief investment incentive special to the SEZs has also to be seen in the light of the corporate profit tax in nearby Hong Kong which amounted to 17%.<sup>28</sup> The provision further states that special preferential treatment shall be extended to the enterprises established within two years after the promulgation of this set of Regulations, or those with an investment of five million US dollars or more, or those involving relatively high technology or having a relatively long period of capital turnover.

As to import duties, according to Article 13 of the Guangdong Regulations, all production material (i.e. machinery, equipment, means of transportation) is exempted from import duties. Furthermore, if the material is moved from the SEZ into the interior of China, an approval of the Guangdong Provincial Committee for the Administration of SEZs is necessary and duties will be assessed (Article 9).

#### 4) Land use

At the end of the 70s when the SEZs were established, and prior to its amendment in 1988, Art. 10 of China's Constitution provided that "no organization or individual could appropriate, buy, sell, lease land, or in any way unlawfully transfer land". The China Land Administration Law as well as the China General Principles of Civil Law also contained the prohibition on the transfer of land. This is indicative of the nonexistence of private ownership of land (as the land is owned exclusively by the state<sup>29</sup>) and of the virtually non-existent land use rights. Also China's equity joint venture regulations clearly forbid transfer of any type of land use rights (Article 53).

Against this background it is striking and very telling that, for example, Shenzhen SEZ already in the early stages did not only test out new legislative ideas but even achieved break through effects by implementing rules which harshly contrasted the existing legal constraints: Since the Shenzhen SEZ was chosen as a location where market-oriented experiments should be undertaken, in December 1987, the Standing Committee of Guangdong Pro-

vincial People's Congress adopted the Regulations on Land Management<sup>30</sup>, thereby contravening the Constitution and national law. This regulation enabled investors to utilize land, to transfer, lease and secure land use rights or use them in other kinds of economic, profitable activity. It also legalized the selling of the right-of-land use through agreements, tendering and even through open auctions (Article 9), thus making Shenzhen the first city in China with compensated land use.<sup>31</sup> The legislation which can be described as China's first regulations creating a system of assignable land use rights, declared that state-owned land should be revived as economic assets – that is to say it should be seen as a special commodity whose right of use could be leased.<sup>32</sup> The experimental move to adopt the market principle in granting land use rights to investors contributed to the amendment of Article 10 of the 1988 China's constitution which eventually permitted the transference of the land-use right in accordance with the law.<sup>33</sup> It is evident that Shenzhen – as the prototype of a successful SEZ – has played an important demonstration role in leading China's successive reforms.

#### 5) Labor force

Creating an efficient labor management is of high significance: Many investors are attracted to establish enterprises in China owing to the relatively inexpensive labor force compared to other industrial countries. However, a harmonious and fair labor relationship is desired. This is to say social welfare is to be promoted, human resources have to be attracted and the enthusiasm of workers has to be enhanced. All these factors contribute to a pleasant working atmosphere on the one side and to a fulfillment of the profit-making purpose of the investors on the other side.

The government procedures determining employees' wages had been inherent in a planned economy that was still prevailing at the time the SEZs came into existence. In most regions of China, outside the Zones, the operation and management

<sup>27</sup> Adopted at the 4th Session of the 7th National People's Congress on April 9, 1991 and promulgated on the same day on Order No. 45 of the President of the PRC, English version available at <<http://www.chinatax.gov.cn/n6669073/n6669088/6888509.html>>, visited January 5<sup>th</sup>, 2014.

<sup>28</sup> Ann Fenwick (supra note 16), p. 383.

<sup>29</sup> The government is strongly against the introduction of privatization of land. It fears that this would entail a return to landlord class and thus create social inequality and instability in rural China, see more closely ZHANG Qian Forrest/John Donaldson, China's Agrarian Reform and Privatization of Land: A Contrarian View, Journal of Contemporary China, Vol. 22, issue 80, pp. 255-272.

<sup>30</sup> Promulgated January 3, 1988 by the Guangdong Provincial People's Congress, English version available at <[http://www.novexc.com/shenzhen\\_land\\_manage.html](http://www.novexc.com/shenzhen_land_manage.html)>, visited January 10<sup>th</sup>, 2014.

<sup>31</sup> In terms of the commercialization of land-use rights, see CHEN Lei-Mark D. Kielsingard, Evolving Property Rights in China: Patterns and Dynamics of Condominium Governance, Chinese Journal of Comparative Law (2013), Vol. 1, issue 2, p. 4; regarding the evolution of land use rights in general see Benjamin W. James, "Expanding the gap: How the rural property system exacerbates China's urban-rural gap, Columbia Journal of Asian Law, 2007, pp. 452-491.

<sup>32</sup> Cf. ZHU Jieming, Changing Land Policy and its Impact on Local Growth: The Experience of the Shenzhen Special Economic Zone, China, in the 1980s, in: Urban Studies, Vol. 31, No. 10, 1994, p. 1612; CHEN Tung-Pi, Emerging Real Estate Markets in Urban China, in: 8 Int'l Tax & Bus. Law 78 (1990), p. 87.

<sup>33</sup> WANG Weiguo (supra note 26), p. 96; ZHU Jieming (supra note 32), p. 1612; CHEN Tung-Pi (supra note 32), pp. 87-88.

of enterprises were subject to the dictates of central or local planning authorities.<sup>34</sup> This is to say that it was virtually impossible to discharge any employee, even for a dissatisfying performance.<sup>35</sup> The Regulations of the Guangdong SEZs, however, contained innovations in labor, wage and social protection by breaking the tradition of government job allocation and wage-determination: The forms of payment, rewards and dismissal of employees remained within the discretion of foreign capital enterprises (see Articles 20, 21 of the Regulations). Thus, companies operating inside the zones could enter into labor contracts with specific term limits, had the right to dismiss unskilled workers, and could adjust the wage rate to reflect the market situation. The establishment of labor insurance (Art. 21) as well as the engagement in protecting the rights and interests of the workers show that Shenzhen endeavored to adjust the labor contract system required by a market economy. These factors were crucial to attracting adequate human resources.

## 6) Developed infrastructure

Due to the fact that the provincial government was directly responsible for the economic development in Shenzhen, economic planning was also to be in the hands of the provincial government:<sup>36</sup> Great investments were undertaken in developing sea, air, and land transportation networks. Thus, a convenient and efficient environment for foreign investors was created.

## IV. WTO Challenges

The age of globalization seems to compel every nation to perform at its best which entails an international interdependence and interconnection of the world's economies. However, the increasingly intertwining of markets is exposed to the risk of trade distortions, unfair competition and the undermining of economic integration based on confidence and reciprocity. The WTO – the legal basis for the world economic system – seeks to ensure the coherence and transparency of global trade.<sup>37</sup> In order to achieve the ambitious aim of fair trade, trade barriers should be reduced and discriminatory treatment in international trade linkages is to be removed. Only by respecting and implementing these principles of trade liberalization a stable world economy

can be ensured, from which the states as economic actors can benefit and rely on each other.

Besides, the economic integration promoted by the WTO plays a significant role in guiding the remoulding of legal systems.<sup>38</sup> The membership of the WTO requires the adaptation of domestic rules to globally prevalent economic rules which triggers domestic economic and legal reforms.<sup>39</sup> Going international within the framework of WTO involves the establishment of an operating mechanism that meets the demanding challenges of WTO such as the removal of unfair trade practices, trade barriers, lack of transparency and arbitrary legal regimes.<sup>40</sup>

### 1) China gearing up for WTO challenges

On December 11, 2001, China officially became WTO's 143rd member after having experienced 15 years of arduous and prolonged negotiations.<sup>41</sup> This is owing to a number of factors inherent in the Chinese historical, political and socio-economic conditions, outlined above. However, one crucial aspect is the substantial difference in attitude towards law between the PRC and Western countries: Whereas in European and other Western countries a serious view of law prevails, China has traditionally rejected a formal legal system in favor of unwritten, internalized norms.<sup>42</sup> This also explains why almost all major steps even in post 1978 economic reform period were initiated by policy instruments issued by the Party and the State rather than by means of legal institutions or duly enacted laws<sup>43</sup>, thus creating a rather nontransparent legal and investment environment, incompatible with the principles of WTO.

However, in its accession agreement, China made extensive commitments to lower its trade and investment barriers, to further implement reforms and to improve its domestic governance:<sup>44</sup> The commitments contained in the accession protocol also take into account the long existing differential treatment between foreign and domestic enterprises by demanding the enforcement of national treatment, one of the corner stones of WTO law: Imported and locally-produced goods should be treated equally – at least after the foreign goods have entered the

<sup>34</sup> See *WU Weiping* (supra note 4), pp. 56–57; *SANG Bin Xue* (supra note 17), p. 147

<sup>35</sup> *SANG Bin Xue* (supra note 20), p. 147.

<sup>36</sup> Concerning local policy environment see *WU Weiping* (supra note 4), pp. 54–56.

<sup>37</sup> *Bernard Hoekman*, *The WTO: Functions and Basic Principles*, online available at <[www.terry.uga.edu/~eornelas/Econ4040/WTO-basics.pdf](http://www.terry.uga.edu/~eornelas/Econ4040/WTO-basics.pdf)>, visited January 5<sup>th</sup>, 2014.

<sup>38</sup> *KONG Qingjiang*, *China's WTO accession: Commitments and implications*, *Journal of Economic Law* 2000, p. 658; see generally, *Thomas Yunlong Man*, *National Legal Restructuring in Accordance with International Norms*, 4 *Indiana Journal of Global Legal Studies* 1 (1996), pp. 471–507.

<sup>39</sup> *Ibid.*

<sup>40</sup> *Ibid.*

<sup>41</sup> See generally *Karen Halverson*, *China's WTO Accession: Economic, Legal and Political Implications*, 27 *B.C.Int'l & Comp. L. Rev.* 319 (2004), pp. 323–235.

<sup>42</sup> See *Sonoko Nishitaten*, *China's Special Economic Zones: Experimental Units for Economic Reforms*, 32 *Int'l & Comp. L.Q.* 175 (1983), p. 180.

<sup>43</sup> *CHEN Albert H.Y.* (supra note 11), p. 13.

<sup>44</sup> Many obligations (so called "WTO-Plus"-obligations) exceeded the requirements of the WTO Agreement.

market (Article 3 of GATT).<sup>45</sup> The same should apply to foreign and domestic services (Article 17 of GATS), and to foreign and local trademarks, copyrights and patents (Article 3 of TRIPS). China promised to repeal and cease to apply all legal measures inconsistent with WTO rules on national treatment.

### a) Foreign trade

In order to comply with its WTO commitments concerning foreign trade, China opened some of its most important service sectors to foreign competition and lifted some administrative approvals previously required.<sup>46</sup> Further, it deregulated access to foreign trading rights. The major law governing these changes was the Foreign Trade Law of the PRC<sup>47</sup>, amended on April 7, 2004, which replaced the version of 1994. The government's management on economy gradually changed from direct control with administrative orders into indirect regulation mainly through economic and legal measures, no longer interfering into the firms' operation but exercising macro control over the market<sup>48</sup> thus facilitating and promoting foreign trade (Art. 51 of the Law of Foreign Trade; also manifested in Art. 15 of the Constitution).

### b) Foreign investment

China also increased market access for foreign investment. Ever since China opened up to foreign investment in 1979, the government still imposed restrictions on the entry of foreign capital through an examination and approval system. Since 1995, the Catalogue for the Guidance of Foreign Investment Industries (Catalogue)<sup>49</sup> is relevant which provides a detailed list as to which industries belong to the encouraged, permitted, restricted or prohibited category of foreign investment projects.<sup>50</sup> In the course of its accession to the WTO, however, China revised this Catalogue significantly in order to take account of the national treatment principle: A WTO member is obligated to treat foreign-service suppliers in its territory no less favorable than its own national

service suppliers according to the service schedule attached to GATS.<sup>51</sup> This has led to an increase in FDI. Due to the amended WFOE law in 2000, export requirements which used to restrict the few existing WFOEs in their marketing and sales strategy were lifted. The wholly foreign-owned enterprise has now become the most widely used investment vehicle, a progress which had been unimaginable a few decades ago where WFOEs were only established in SEZs.

### c) Intellectual property rights and transparency

Closely related to the liberalization of foreign trade and foreign investment has also been the development of intellectual property rights. Furthermore, WTO accession played a major role in building up domestic governance by respecting the principle of transparency which is essential for a sustained economic development. China committed itself to publish the newest developments as well as legal documents in order to ensure predictability of trade relations and public participation in the rulemaking process (Part I 2. C of the accession protocol).

### d) Interim findings

We can draw from the above that China's membership in the WTO has achieved a far reaching impact: The whole country – not just designated areas as it used to be at the end of the 70s – opened up and incorporated the international standard of trade rules required for the integration into the world economy. It was the principle of national treatment in particular which fostered trade relations and FDIs by ensuring that through the reduction of tariff and non-tariff barriers in trade in goods and through the minimization of entry restrictions concerning foreign enterprises, the same treatment was given to foreign goods and enterprises as to the own nationals. This might indicate that attractive and favorable conditions for investors are no longer characteristic of SEZs, but apply to China in its entirety. Even the 15% preferential corporate income tax rate on foreign investors which was a special feature of SEZs, was eventually invalidated: The NPC promulgated a new Enterprise Income Tax Law<sup>52</sup> which contributed to a greater level playing field of competition between domestic companies and FIEs. Subsequently, FIEs in the SEZs are now subject to the

<sup>45</sup> See Principles of the trading system - Trade without discrimination, <[http://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/fact2\\_e.htm](http://www.wto.org/english/thewto_e/whatis_e/tif_e/fact2_e.htm)>, visited January 3<sup>rd</sup>, 2014.

<sup>46</sup> Concerning liberalization of trading rights see more detailed *Julia Ya Qin* (supra note 18), pp. 13–14.

<sup>47</sup> English version available at <<http://english.mofcom.gov.cn/aarticle/policyrelease/internationalpolicy/200705/20070504715845.html>>, visited January 12<sup>th</sup>, 2014.

<sup>48</sup> See more closely *Robert Heuser*, *Gegenwärtige Lage und Entwicklungsrichtung des chinesischen Rechtssystems. Eine Skizze, Verfassung und Recht in Übersee (VRÜ)* 38 (2005), p. 140.

<sup>49</sup> Amended in 2011, English version online available at <<http://english.mofcom.gov.cn/article/policyrelease/aaa/201203/20120308027837.shtml>>, visited January 17<sup>th</sup>, 2014.

<sup>50</sup> Interim Provisions on Guiding Foreign Investment Direction, issued by the former State Planning Commission, state Economic and Trade Commission and MOFTEC on 20 June 1995. For more details see also *Julia Ya Qin* (supra note 15), p. 14.

<sup>51</sup> The core provisions of the GATS (Art. 16, market access and Art. 17, national treatment) apply only to sectors explicitly included by a Member in its schedule of commitments and are subject to the limitations that a Member has scheduled. This can be described as a "positive list" approach. Therefore, the scope and terms of market access for foreign investment in services sectors differ, depending on the specific commitments under GATS.

<sup>52</sup> Promulgated on March 16, 2007, effective as of January 1, 2008, English version available at <[http://www.npc.gov.cn/englishnpc/Law/2009-02/20/content\\_1471133.htm](http://www.npc.gov.cn/englishnpc/Law/2009-02/20/content_1471133.htm)>, visited January 13<sup>th</sup>, 2014.



same 25% uniform corporate income tax rate (Article 4) as domestic enterprises in China.<sup>53</sup> But not only have the exclusive policies and privileges once typical of SEZs spread to many other parts of China. The SEZs are also gradually losing their low-cost labor advantages to other countries such as Vietnam and Bangladesh.<sup>54</sup>

## 2) Effect of WTO on SEZs

Before examining the assumption that by now the advantages of SEZs are fading away and the SEZs are losing their edge, it has to be clarified which impact China's accession to the WTO achieved on SEZs.

According to Part I 2.B of its accession protocol, China promised to apply the WTO rules to the "entire customs territory of China, including border trade regions, (...), Special Economic Zones, (...) and other areas where special regimes for tariffs, taxes and regulations are established", thus ensuring a uniform applicability and administration of WTO obligations.<sup>55</sup>

Due to WTO member concerns about products from China's SEZs being treated differently from other products imported into China and because of the lack of information on laws and measures relating to the SEZs, China ensured non-discriminatory treatment by applying all taxes, charges and measures that are normally applied to imports, to imported products introduced into other parts from China from its SEZs (Part I 2. B of the accession protocol). With regard to transparency, China pledged to provide the WTO with all necessary information on the developments of SEZs. Uniform enforcement of taxes, tariffs and non-tariff measures on trade between its SEZs and the other parts of China's customs territory was strengthened.

China's accession to the WTO entailed a certain relativity of the special characteristics prevailing in the SEZs: The WTO principle of national treatment led to the creation of overall favorable and attractive conditions for FIEs thus promoting further the opening up of the Chinese country as a whole. And yet, it must not be overlooked that the SEZs were once established as "special" areas, separate

from the rest of China, where market economy elements and flexible, more liberal policies were implemented in order to attract foreign investors to at least these parts of China. At the beginning, they were merely "testing zones", setting a precedent for open minded economic and legislative actions not being restricted by state interference. However, the policies and administrative decision made by the SEZ-authorities achieved extensive spillover effects, affecting all other parts of China due to their progressive nature concerning legal and economic issues – the policies within the Zones are no longer of a mere "testing" character but are now manifest in the Zones and have even been largely adopted by the rest of China. Therefore, one may very well argue that the SEZs continue to be of great necessity and specialty.

## 3) Continuing significance of SEZs

### a) SEZ as "laboratory" – legislative boost

Since 1992, the NPC Standing Committee further decentralized legislative power. The People's Congress and the governments of Shenzhen City, Xiamen City, Shantou City and Zhuhai Zones were authorized to enact the relevant regulations and rules for application in the respective SEZ, in compliance with the basic principles stipulated in the Constitution, national laws and administrative regulations.<sup>56</sup> Thus, the SEZs enjoyed great legislative leeway in experimenting with new laws suitable for the particularities in the zones. Mostly, the laws enacted in the zones were of a loose character rather than stringent, striving for reducing bureaucracy and state intervention that encumber all economic performances. Due to this progressive approach, the laws were extended to other special areas and finally to the whole province. They also served as a model for national legislation. For example, Shenzhen SEZ was the forerunner of enacting laws which followed and adopted the market principle: more liberal regulations on enterprises were introduced, land use rights were granted to investors, labor contracts were concluded with the possibility of dismissing unsatisfactory workers, thus departing from the long existing custom of the "iron rice bowl"<sup>57</sup>. One can infer that the SEZs are not only a legislative experimental ground. They are also the center of taking new approaches and initiatives which may sometimes be somewhat daring and unusual but achieve a breakthrough-effect by going against mainstream policy with socialist features.

<sup>53</sup> The new law also provided transitional rules to the existing FIEs. For FIEs which were enjoying the preferential tax rate of 15% (i.e. in the SEZs), their applicable tax rate was gradually phased into the new 15% tax rate during a five year period, see Notice on the implementation of the transitional preferential CIT (corporate income tax) policies, State Council, Guofa (2007) Nr. 39 <<http://www.manxiu-law.com/%28S%28504j403z5zwbx55otc0j3f3%29%29/English/NewsShow.aspx?t=59&id=1254&AspxAutoDetectCookieSupport=1>>, visited January 4<sup>th</sup>, 2014.

<sup>54</sup> ZENG Douglas Zhihua (supra note 7), p. 59.

<sup>55</sup> Concerning the compatibility of the establishment of SEZs with GATT principles see more closely Jürgen Zoll, Freizonen im internationalen Wirtschaftsrecht: Völkerrechtliche Schranken exzessiver Wirtschaftsförderung, Baden-Baden 1990.

<sup>56</sup> See supra note 22.

<sup>57</sup> The "Iron rice bowl" is a Chinese idiom referring to the system of guaranteed lifelong employment in SOEs.

## b) Devolution of legislative power - Great potential for development

In China, the central government played a predominant role. However, the central government played a leading role in authorizing SEZs and the associated devolution of power. After the enactment of the 1980 Regulations on SEZs in Guangdong Province, the Resolution of the People's Congress authorized the People's Congresses of Guangdong Province and Fujian Province as well as their Standing Committees to enact various separate regulations to suit the specific conditions and actual needs of the Zones.<sup>58</sup> Since 1992, the NPC Standing Committee has further decentralized legislative power, authorizing the People's Congresses and the governments of Shenzhen City, Xiamen City, Zhuhai City and Shantou City to enact the relevant regulations required for the respective zones. That is to say that the law-making in SEZs is based entirely on the delegation of legislative power by the NPC and Standing Committee of the NPC.<sup>59</sup> Hence, the origin of power for regulation making in SEZs is different as it comes from an authorization by the highest organ of state power or its standing committee whereas the power for regulation making in the ordinary local areas and ethnic autonomous areas comes from stipulations in the Constitution, the Law on Local Organizations, the Law on Legislation, and the Law on Self-government in the Ethnic Autonomous Areas.

The local governments have since enjoyed a considerable degree of autonomy and have been able to implement special and more flexible policies in the reform and opening up process and to engage in intensive lawmaking to attract foreign investments. The central government considered the economic progress of Guangdong to be of utmost importance. Therefore, it not only encouraged policy innovation but also granted full recognition to successful, well-functioning policies even though they broke with traditional socialist ideas.<sup>60</sup> The remarkable decentralization of legislative power itself constituted a major change: The central government used to consolidate its power and was eager to control and permeate every affair. However, the SEZs received a special treatment in that they were granted extensive legislative

power and discretion.<sup>61</sup> On the one side, the devolution of authority from central to local governments was crucial to ensuring economic development, free of any harsh interference of the central government. On the other side, however, due to the expansion of local authorities, the SEZs became very powerful.<sup>62</sup> This is also underlined by Article 65 of the Legislation Law from 2000 which states that the people's congresses or their standing committees of the provinces and cities where SEZs are located may, upon authorization by decision of the National People's Congress, formulate regulations and enforce them within the limits of the SEZs (Article 65). The delegated power also allows the adaptive provisions for laws, administrative regulations and local regulations upon authorization in accordance to the actual circumstances and needs to the special economic zones (Art. 81 of the Legislation Law). This shows that the NPC and its Standing Committee have delegated a considerable degree of autonomy to the SEZs which leads to the hypothesis that due to this phenomenon concerning the legislative power of SEZs, China has somewhat loosened its feature of being a rigid centralist state.

## c) Persisting institutional restructuring

The SEZs do not rest on their laurels. On the contrary: In order to sustain their growth and to strengthen their competitiveness, the zones implemented numerous institutional measures: Owing to the rapid development of high-tech industries, industrial areas were set up that specialize in high-tech production. Thus, many "zones within zones" are created in order to promote specific industrial sectors.

Furthermore, Shenzhen, for example, is engaged in creating an orderly market.<sup>63</sup> That is to say that acting in accordance to international law is considered indispensable. Therefore, already in 2002, Shenzhen has set up the WTO Affairs Center to provide professional services such as training, forums and legal counseling related to WTO issues. This shows that the consciousness of the necessity of acting in compliance with international economic law standards is greatly pronounced - an important factor that contributes to cultivating a sound investment environment.

## d) Spill-over effects

At the end of the 1970s China found itself at the beginning of a challenging transition from a central

<sup>58</sup> Resolution of the Standing Committee of the National People's Congress Authorizing the People's Congress of Guangdong and Fujian Provinces and their Standing Committee to formulate Separate Economic Regulations for their respective Special Economic Zones, adopted at the 21<sup>st</sup> meeting of the Standing Committee of the fifth National People's Congress on November 26, 1981, online available at <<http://www.asianlii.org/cn/legis/cen/laws/rotscotnpcatpcogafapatsctfserfrsez2384/>>, visited January 4<sup>th</sup>, 2014.

<sup>59</sup> See also LI Yuwen/*Jan-Michiël Otto*, Central and Local Law-Making: Studying China's Experience, in: *Eduard B. Vermeer/Ingrid D'Hooghe* (ed.), *China's legal reforms and their political limits*, London, 2002, p. 8.

<sup>60</sup> *Sebastian Heilmann*, Maximum Tinkering under Uncertainty - Unorthodox Lessons from China, *Modern China* (2009), Vol. 35, issue 4, p. 457.

<sup>61</sup> Elaborating on the statement that delegation and authorization of law-making powers is necessary for economic reform purposes, see *CHEN Jianfu*, Sources of Law and Law-Making, in: *Chinese Law: Context and Transformation*, Chapter 5 Leiden, The Netherlands, 2008, p. 181.

<sup>62</sup> *LI Yuwen/Jan-Michiël Otto* (supra note 59), p. 8.

<sup>63</sup> See *YUAN Yiming/GUO Hongyi/XU Hongfei* et al. (supra note 21), p. 76.



planned economy marked by a rigid state intervention to a market economy that is determined by freedom of contract, competition and integration into global economy. The SEZs were a vehicle to reach this objective: By promoting the concentration of resources in some areas and focusing on the economic development in these zones, China not only gradually opened up to foreign countries by attracting FDI which can be described as an “international dimension” of SEZs. Also the whole country benefited from the establishment of SEZs due to the increasing adoption of diverse successful liberalization policies tested in the SEZs – so called “domestic dimension”. That is to say, potential unbalanced economic developments which may lead to distortions of regional competition, has been counteracted through various measures:

As the initial opening to trade and investment proved successful, the central authorities created a variant of SEZs, the so called economic and technical development zones (ETDZ)<sup>64</sup> in order to open the economy even further: From 1984 to 1988 14 ETDZ were established in coastal cities.<sup>65</sup> It is noteworthy that most areas which enjoyed an economic boom owing to preferential tax treatment, high concentration of infrastructural investments, etc., were situated in the east and at the coast whereas the inland regions were comparatively undeveloped. It was in 1992, that the State Council sought to extend the ETDZs from the coastline to inland regions.<sup>66</sup> The enormous success of SEZs and special areas in general have inspired and motivated the authorities to also focus more intensely on the economic development of regions in western parts of China. Here, the “Go West Strategy”<sup>67</sup> comes into play: As already insinuated above, in the 1980s when the coastal cities were blossoming, the western half of China lagged behind severely. A Leadership Group of Western China Development was created by the State Council in 2000 in order to help the western half catch up with the prosperous eastern regions by improving communication and transportation infrastructure.<sup>68</sup> In the case of Chengdu, for example, the government has mapped out specific development zones. But also in the other landlocked places, the establishment of specific zones plays a significant role in promoting western regions’ development.

The concept of implementing certain zones to increase trade by offering special trade incentives

and thus to stimulate local and foreign investment within the region has spread throughout the country of China and is highly esteemed as an instrument for economic development.<sup>69</sup> To mention are other types of special areas prevailing in China, such as export-processing zones, the bonded zones and high technology industrial development zones.<sup>70</sup>

### e) The China (Shanghai) Pilot Free Trade Zone

The most recent example of a geographical area that receives particular types of special policy treatments in the areas of taxation, investment and financial liberalization is the China (Shanghai) Free Trade Experimental Zone (FTZ) established in September 29, 2013.

The FTZ is officially called the “first” FTZ. The Shanghai FTZ covers Shanghai Waigaoqiao Bonded Zone, Shanghai Waigaoqiao Bonded Logistic Park, Yangshan Bonded Port Area and Shanghai Pudong International Air Port Bonded Zone, with the total area of 28, 78 sq km. On August 30, 2013, the Standing Committee of the 12th National People’s Congress approved the Decision on Authorization of the State Council to Temporarily Adjust Relevant Administrative Examination and Approval Items Stipulated in Applicable Laws (hereinafter referred to as the “Decisions”)<sup>71</sup>. This Decision authorizes the State Council to suspend several approval requirements for FIEs as provided under the Law on Wholly Foreign-owned Enterprises (WFOE Law), the Law on Sino-foreign Equity Joint Ventures (EJV Law) and the Law on Sino-foreign Contractual Joint Ventures (CJV Law). According to these laws, FIEs shall be subject to examination and approval of competent authorities including their establishment, changes and termination (Articles 6, 10 and 20 WFOE Law; Articles 3, 13, and 14 EJV Law; Articles 5, 7, 10, 12(2) and 24 CJV Law). According to the Circular of the State Council on the Framework Plan for the China (Shanghai) Pilot Free Trade Zone (hereinafter referred to as the “Plan”)<sup>72</sup>, the examination and approval of foreign-

<sup>69</sup> For more details on ETDZs providing important platforms for regional development strategies, see *News on the 14th China International Chair for Investment and Trade*, September 2010, online available at <[http://english.mofcom.gov.cn/article/zt\\_fourthcifit/lan-mua/201009/20100907133026.shtml](http://english.mofcom.gov.cn/article/zt_fourthcifit/lan-mua/201009/20100907133026.shtml)>, visited January 4<sup>th</sup>, 2014.

<sup>70</sup> Concerning the different types of zones, see *Sebastian Heilmann*, *Policy Experimentation in China’s Economic Rise*, *Studies in Comparative International Development* (2008), Vol. 43, issue 1, p. 8.

<sup>71</sup> 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, Chinese version available at <[http://www.gov.cn/jrzq/2013-08/30/content\\_2477971.htm](http://www.gov.cn/jrzq/2013-08/30/content_2477971.htm)>, English translation not yet available but overview in English online available at <[http://www.wenfei.com/fileadmin/templates/China\\_Legal\\_Briefing/130918\\_China\\_Legal\\_Briefing\\_No\\_233.pdf](http://www.wenfei.com/fileadmin/templates/China_Legal_Briefing/130918_China_Legal_Briefing_No_233.pdf)>, visited January 17<sup>th</sup>, 2014.

<sup>72</sup> 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, issued on September 18<sup>th</sup>, 2013, online available at <[http://www.gov.cn/zwqk/2013-09/27/content\\_2496147.htm](http://www.gov.cn/zwqk/2013-09/27/content_2496147.htm)>, English version available at <<http://en.shftz.gov.cn/FrameworkPlan.html>>, visited January 14<sup>th</sup>, 2014.

<sup>64</sup> 国家级经济技术开发区.

<sup>65</sup> ZENG Douglas *Zhihua* (supra note 5), p. 10.

<sup>66</sup> *Ibid.*

<sup>67</sup> *Andrey Moody/HU Haiyan/WEI Ma*, “Go West” policy is an economic milestone for nation, *China Daily*, 12/09/2011, p. 16.

<sup>68</sup> *CHOU Chia-Chen/TUNG Han-Pu*, *Policy Experimentation and China’s Labor Market Regulation: The Case of the Labor Contract Law*, in: *GUO Baogang/Dennis Hickey* (ed.), *Toward better governance in China – An unconventional pathway of political reform*, Plymouth, UK, 2010, p. 141.

invested projects will be replaced by filing procedures (item 2 of part II of the Plan). Although the adjustments on relevant laws are only temporary, they can already be seen as an experiment of a simplified approval and examination system which is likely to achieve an impact on the investment regime in China since the burden of bureaucracy and superfluous administrative procedures faced so far by FIEs is greatly reduced and transparency, as well as legal certainty for foreign investors is ensured. Thus, equal treatment between domestic and foreign investors in the FTZ is promoted.

Another core innovation of the FTZ is the adoption of a new administration model, the "Negative List" which is similar to the Catalogue of Industries for Guiding Foreign Investment (2011 Amended Version), although the classification of FIEs in the "Negative List" is different. The "Negative List" only uses the wording "restricted" and "prohibited" FIEs. Most of the "restricted" and "prohibited" industries included in the Catalogue are also spelled out in the "Negative List", a number of "encouraged" industries found in the Catalogue are absent from the "Negative List" as can be deduced from the Special Administration Measures for Foreign Investment Entry in China (Shanghai) Pilot Free Trade Zone<sup>73</sup>, promulgated by the Shanghai Municipal Government. Within the FTZ, industries which are not explicitly restricted or prohibited from foreign investments will not be subject to any approval and only filing is required. The "Negative List" is an innovative management approach that aims to open more sectors for foreign investments, cultivating a transparent, more liberal investment environment that is compliant with international standards.

The FTZ, compared to existing bonded zones<sup>74</sup> () – which mainly support free trade of goods – focuses on extending investment opportunities to the service industry including financial sector, shipping, commercial sector, legal services, cultural and social sector. Particularly the financial liberalization is of high importance: The Plan deregulates exchange control and adopts innovative financial measures, such as interest rate liberalization, cross-border use of RMB and free RMB capital account convertibility (part II item 4 of the Plan).

It is very telling that the reforms to a great extent entail power delegation – a striking feature of the legal framework of SEZs: According to the Decision, the State Council is authorized to suspend the ap-

plication of currently effective laws. Following that, the Plan states that the Shanghai Municipal People's Government shall be responsible for the implementation of the Framework Plan, that is, adopting policies for expanding the opening up of the service industry (part IV of the Plan). Again, a considerable degree of autonomy is conferred on the local government, the Shanghai Municipal People's Government, with regard to attaining the goals stipulated in the plan by being sensitive to new cases and problems and finding respective solutions.

This shows that the concept of SEZs is not outdated but is a striking feature of China being endeavored to overcome the transition from planned economy to market economy and thus to be seen as an equal partner in the world economy adhering to and adopting international law.

## V. Problematic aspects of WTO compatibility

The question arises whether the SEZs can only be seen in a positive light or whether the SEZs despite their enduring attractiveness and advantages have to be scrutinized critically with regard to WTO requirements. Each SEZ has its own unique configuration of incentives which have to be compliant with WTO law.<sup>75</sup> Of greatest concern are export subsidies and requirements to use domestic over imported goods. Here, the WTO agreement on Subsidies and Countervailing Measures (SCM Agreement) comes into play. According to the World Bank's interpretation, SEZ regimes that have specific incentives linked to export performance – such as minimum export requirements, subsidized rent or utilities, or a lower tax on export income – are not compatible with WTO disciplines (Art. 3 of the SCM Agreement) and have to be altered.<sup>76</sup> Unfortunately, China's industrial policies rely to a great extent on such trade-distorting measures which have already caused various trade disputes between the US and China but also between the EU and China. Particularly the SEZs which focus on export which has to be in line with the SCM Agreement in order not to harm other countries and raise more WTO concerns.

## VI. Conclusion and prospects

Although the country has reached a high level of economic liberalization, the SEZs remain impor-

<sup>73</sup> 中国（上海）自由贸易试验区外商投资准入特别管理措施（负面清单），Chinese version online available at <<http://www.shanghai.gov.cn/shanghai/node2314/node2319/node12344/u26ai37036.html>>, English version available at <<http://en.shftz.gov.cn/Special.html>>, visited January 17<sup>th</sup>, 2014.

<sup>74</sup> 保税区.

<sup>75</sup> See more closely *Stephen Creskoff/Peter Walkenhorst*, Implications of WTO Disciplines for Special Economic Zones in Developing Countries, The World Bank, 2009, online available at <<http://elibrary.worldbank.org/doi/pdf/10.1596/1813-9450-4892>>, visited January 4<sup>th</sup>, 2014.

<sup>76</sup> The World Bank Group, Special Economic Zones – Performance, Lesson learned and Implications for Zone Development, Washington D.C., 2008, online available at <<https://www.wbginvestmentclimate.org/uploads/SEZs%20-%20Performance,%20Lessons%20Learned%20and%20Implications%20for%20Zone%20Development.pdf>>, visited January 4<sup>th</sup>, 2014.

tant and represent a flagship of open-minded, flexible legislation and policies, increased orientation towards market-economy elements and persisting institutional reforms such as the improvement of the already existing advantageous infrastructure as well as legal institutions. All this paves the way for a continuing attraction of foreign investors and for new economic and technological opportunities.

The SEZs today are not only experimental grounds for legislation and economic policies. Rather, the liberal thinking which has been developed since the opening reforms in 1979, the decentralized structure and the already existing orderly market, which provide an advantageous investment environment, have gained further ground and serve as a model for the rest of China which is also manifested in the recently established Shanghai Free Trade Zone. However, these Zones must not recklessly operate and rigidly pursue their interests but their specialized regulatory regime has to be consistent with international law. That is to say that intricate issues such as export subsidies must be brought in line with the international law.

Thus the SEZs certainly have a bright future in that they continue to be sites of economic integration between domestic and international economies. However, this bright future will be overshadowed by new challenges of WTO law.