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USE OF SEZs FOR DEVELOPMENT: NATIONAL POLICIES OF CHINA AND INDIA AND THE POTENTIAL LEGAL IMPLICATIONS

Rajan Sudesh Ratna & FU Jiangyuan*

[Abstract] Special Economic Zones (SEZs) have proliferated over the past decade and are leveraged as engines for development, especially in emerging countries, notably China and India. While much debate has focused on their evolution and economic performance, laws sustaining and contesting SEZs have received less attention in academic literature. There is no internationally accepted legal framework to regulate SEZs, and governments have formulated their own SEZ policies with their respective national developmental objectives. SEZs policies often involve shifts in regulatory powers in the legislature and significant room for executive discretion, thus raising questions about their legal regime at both the domestic policy level and international economic law. In Section II, the article starts with the SEZ policy experiences in China and India and their economic performances. Section III compares the differences between SEZ policies in the two countries. In section IV, the authors argue that despite the differences in design, institutional characteristics, and economic outcomes of SEZs in China and India, there are common concerns rooted in the legal regimes that underpin the potential conflicts with national policy and international obligations. In Section V, it is concluded and recommended that policymakers should properly consider the legal regimes governing SEZs and recognize their potential conflicting regimes.

[Keywords] SEZs; subsidies; international trade and investment; legal implications

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I. INTRODUCTION

Special Economic Zones (SEZs) are geographically delimited areas within which governments facilitate industrial activity through fiscal and regulatory incentives, as well as infrastructure support.¹ The World Customs Organization's Revised Kyoto Convention defines these zones as "part of the territory of a Contracting Party where goods introduced are generally regarded, insofar as import duties and taxes are concerned, as being outside the customs territory."² Governments formulate their domestic policies for SEZs while keeping in mind the export potential of units that are set up in the zones. This is because they are also required to meet export obligations in order to avail tax benefits. SEZs have evolved in both breadth and depth since the establishment of the first modern SEZ in Shannon, Ireland. They can now be referred to by different names with various variations, such as free trade zones (FTZs), export processing zones (EPZs), industrial parks, and free ports, among others. Regardless of the name or type, SEZs have been intentionally designed as an important policy tool to promote economic development and growth. Therefore, the umbrella term "SEZ" is used in this article to denote a broad range of modern fiscal enclaves. Due to the rapid development of SEZs worldwide, they are no longer simply focused on incentive measures. Instead, they are now more about formulating special policies for carefully selected areas that can be transformed into international gateways. These policies differ from generic industrial promotion policies that are typically formulated.

There is no internationally accepted legal framework to regulate Special Economic Zones (SEZs). Therefore, each government formulates its own SEZ policy in alignment with its national developmental objectives. Through these policies, investments are solicited in demarcated areas by offering various incentives, which may include tax incentives, affordable land, land-use preferences, duty-free imports of materials, as well as trade and investment facilitation. These incentives result in a reduction in the production cost of goods manufactured within these zones, making them more competitive than similar goods produced outside the zones within the same country. Some of these incentives may potentially violate certain multilateral obligations, such as being a trade-distorting subsidy of a country, which could lead to trade disputes in forum like the WTO.

¹ UNCTAD, *World Investment Report 2019: Special Economic Zones* (2019), at <https://www.un-ilibrary.org/content/books/9789210041584> (Last visited on August 9, 2022).

² Chapter 2 of Specific Annex D of Revised Kyoto Convention of World Customs Organization.

Asia hosts three-quarters of the global SEZs, with China and India notably leading the way. India was the first country in Asia to recognize the effectiveness of SEZs in promoting trade,³ and both countries have a long history with SEZs. They have successfully utilized SEZ policies to achieve their developmental goals. This paper examines the evolution of SEZ policies in China and India, assesses their performance, and tracks how these policies have changed over time. Furthermore, the paper explores the similarities and differences between China and India's SEZ policies while considering their international obligations and trade disputes. Finally, the paper provides recommendations for the legal aspects that need to be taken into account when developing a successful SEZ policy.

II. SEZS IN CHINA AND INDIA

A. Experience of China

1. *Evolving SEZ Policies in China*

The development of SEZs in China started in the late 1970s as an integral part of its "reform and opening up" policy. Export processing zones (a subdivision and widely observed SEZ form) were already a common component of modernization programs in the majority of Asian countries.⁴ Regional experiences undoubtedly helped shape China's decision to develop its own SEZs. The first batch of SEZs was established in Shenzhen, Zhuhai, Shantou, and Xiamen to leverage their geographical proximity to Hong Kong, Macao, and Taiwan. These SEZ pilots in remote southern cities were ideal for testing economic liberalization while minimizing potential political and economic risks spreading to other parts of the country.

The early success of SEZs encouraged further experimentation in 14 more cities along the east coast to attract foreign direct investment (FDI), promote export growth, and test new policies for the impending economic transition on a small scale of reform. The Yangtze River Delta and the Pearl River Delta were thus proven capable of substantial world manufacturing clusters and accompanied the further development of port terminal

³ As of 2019, China hosts more than 2500 SEZs while India takes the third place next to the Philippines, hosting over 370 SEZs. See UNCTAD, *supra* note 1.

⁴ Ann Fenwick, *Evaluating China's Special Economic Zones*, 2(2) Berkeley Journal of International Law 376, 376 (1984).

hubs. In 1988, SEZs expanded to the Hainan province, which is now being upgraded to become the largest free trade port in China.

In the 1980s, as the first decade of China's SEZ trial, local governments offered desirable incentives to investors. Preferential treatment granted to SEZs included tax incentives such as tax holidays, tax concessions, reduced red tape associated with market access, land use rights, and direct subsidies.⁵ With these special arrangements, SEZs quickly became popular destinations for FDI. The SEZs pilot programs obviously provided a testing ground for rules and regulations related to foreign capital and trade liberalization.

In the 1990s, some of the original preferential policies were phased out. Starting from 1992, China established its commitment to building a socialist market economy and began to accelerate reforms and opening up. The SEZs model shifted to national-level new areas and proliferated across the country. SEZs became an important symbol of a new round of economic reforms. Many SEZs with various management models were created and diverged from each other according to dimensions and purposes but were subsequently diffused to the rest of China in the 21st century, including inland zones such as Yangtze River ports and border cities.

This is part of China's "Western Development" policy aimed at increasing incomes, alleviating social tensions, and fostering prosperity in the western regions of the country. It includes preferential treatment such as reduced or no customs duties, no import quotas,⁶ looser foreign exchange controls,⁷ unrestricted profit repatriation, tax incentives, duty-

⁵ These can be found in China's earlier SEZ regulations. *See* Regulations on Special Economic Zones in Guangdong Province (promulgated by Standing Committee of the Guangdong Provincial People's Congress, Sept. 16, 1980, effective Sept. 16, 1980); Regulations on Several Issues Concerning the Taxation Policy of Enterprises in the Shenzhen Special Economic Zone (promulgated by Shenzhen People's Government, Aug. 1, 1988, effective Sept. 1, 1988). Regulations of the Shenzhen Special Economic Zone on Land Management (promulgated by the People's Congress of Guangdong Province, Jan. 3, 1988, effective Jan. 3, 1988).

⁶ Products are not subject to export quota and licensing control in special regions. *See* Article 11 of Customs Supervision Measures for Bonded Zones (promulgated by the General Administration of Customs, Aug. 1, 1997, effective Aug. 1, 1997); Article 21 of Regulations of Zhuhai City on the Zhuhai Bonded Zone (promulgated by the Zhuhai People's Congress, May 21, 1998, effective July 1, 1998).

⁷ Article 6 of Provisional Measures for Foreign Exchange Management in Bonded Zones (promulgated by the State Administration of Foreign Exchange, Jun. 29, 1991, effective Jun. 29, 1991, expired by Procedures on Foreign Exchange Control in Bonded Areas on Jan. 1, 1996); Article 2 of Notice of the State Administration of Foreign Exchange on Issues Related to Foreign Exchange Management in Bonded Zones (promulgated by the State Administration of Foreign Exchange, Sep. 1, 1998, effective Sep. 10, 1998, expired by Measures for Foreign Exchange Control in Bonded Areas in 2002).

free allowances for production materials, land use, and the provision of better and more accessible infrastructure to attract investors.

The first decade of the 21st century witnessed the evolution of SEZ (Special Economic Zone) development in China. In 2001, as a result of China's accession to the WTO (World Trade Organization), the country was required to eliminate certain export subsidies and subsidies that promoted the use of domestic inputs instead of imported ones, including within SEZs. By 2021, the central government had abolished more than 2,000 regulations and departmental rules, while local governments had repealed over 190,000 local policies and regulations.⁸

In the 2010s, SEZ development saw more breakthroughs and innovations. In May 2010, the establishment of the Horgos Special Economic Zone and the Kashgar Special Economic Zone in Xinjiang marked a significant milestone in the expansion of SEZs from coastal areas to inland regions.

In 2013, the Shanghai Free Trade Zone (FTZ) was launched, marking a new generation of wide-area SEZs with comprehensive reforms in trade and investment, as well as in their legal and regulatory frameworks. It is the first pilot FTZ in China, covering four special customs supervision areas in Shanghai and later expanding to include High-Tech Parks and Finance and Trade Zones. The FTZ was designed with extensive reforms beyond traditional SEZs, with a focus on trade facilitation. It also introduced measures to enhance the investment management systems through a negative-list approach, financial innovation aimed at capital account convertibility, liberalization of financial services, and a more convenient and efficient legal environment.

More recently, the Communist Party of China Central Committee and the State Council released the Overall Plan for the Construction of the Hainan Free Trade Port. Subsequently, the Hainan Free Trade Port Law of the People's Republic of China took effect on June 10, 2021. Hainan is taking bold steps toward becoming the largest island-wide SEZ in China, with comprehensive reforms and the highest level of openness. In the same year, to further advance the reform of simplifying administrative procedures, decentralizing powers, optimizing the business environment, and accelerating the transformation of government functions, the Standing Committee of the National People's Congress

⁸ MINISTRY OF COMMERCE, GOVERNMENT OF CHINA, CHINA HAS FULLY FULFILLED ITS COMMITMENT TO THE WORLD TRADE ORGANIZATION (WTO) ACCESSION, at https://www.gov.cn/xinwen/2021-10/28/content_5647459.htm (Last visited on August 9, 2022).

introduced the Decision on Authorizing the State Council to Temporarily Adjust the Application of Relevant Legal Provisions in Pilot Free Trade Zones.⁹

The establishment of the Shanghai Free Trade Pilot Zone and the Hainan Free Trade Port in China serves as “experimental fields” for the implementation of higher-level openness policies across various domains, including economics, urban development, ecology, society, industry, taxation, and legal systems. These zones feature high-quality innovation-driven development systems and demonstrate China’s strong determination and proficiency in SEZ innovation and opening up. They also represent concrete practices through which China promotes the construction of an open world economy, reinforcing the country’s commitment to advancing high-level openness. China’s high-quality openness model aligns with the global aspiration for collaborative and shared development vision.

Instead of having a unified national regulatory SEZ framework, China’s approach to regulating SEZs has been more reactive and piecemeal in nature, with legislations specific to zones in the form of local regulations, such as the “Regulation on China (Shanghai) Pilot Free Trade Zone” and the “Regulation on the China (Guangdong) Pilot Free Trade Zone,” among others. These zones are also subject to other laws, decrees, and related regulations governing customs, trade, and investment issues related to the zones.

During the development of SEZ policies, local legislative bodies and local governments were granted a high degree of autonomy as a testing ground for the application of new policies and approaches to support local economies.¹⁰ Thus, the regulatory fragmentation in China is understandable and necessary because SEZ specialization in particular types of projects is suited to their individual resource endowments, while others, such as Shenzhen and Shanghai FTZ, are comprehensively open. These zones serve as social and economic laboratories where new approaches for a successful model can be tested, with far-reaching potential for future national emulation.

⁹ Standing Committee of the National People’s Congress (NPC), Decision of the Standing Committee of the National People’s Congress on Authorizing the State Council to Temporarily Adjust the Application of Relevant Legal Provisions in Pilot Free Trade Zones (2021).

¹⁰ See for instance, 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, 26th Meeting of the 7th National People’s Congress (July 1, 1992). See Madeleine Martinek, *Special Economic Zones in China and WTO: Bleak or Bright Future?*, 21(1) Zeitschrift für Chinesisches Recht 41, 41 (2014).

2. The Performance of China's SEZs

SEZs play an instrumental role in contributing to China's export-led growth and economic success, as well as in integrating China into the global economy and promoting its own economic development. Figure 1 illustrates China's impressive economic growth since the establishment of the first batch of SEZs. The total import and export value has also experienced phenomenal growth over the past decade. The ratio of total import and export value to GDP has increased from less than 10% since the beginning of the country's reform and opening up to nearly 65% in 2006. This reflects the policy objectives of the first two phases of SEZ development, leveraging SEZs as experimental laboratories and contributing to the establishment of a robust export-led economic development through industrialization. The economic growth in SEZs in "the most likely to succeed" areas and later selected regions, forming "concentric circles," has led to spillover effects across the remaining parts of the country.

After the global economic crisis in 2008, China's foreign trade value continued to grow, but the degree of dependence on foreign trade dropped to approximately 30%. This is also consistent with the changing policy objectives of the new generation SEZs, which have shifted from the traditional export-oriented focus to a mix of diverse and comprehensive industrial, service, and urban amenity operations. This also suggests the significant positive spillover effects of SEZs on the country's economy as a whole, including FDI, manufacturing, and productivity.

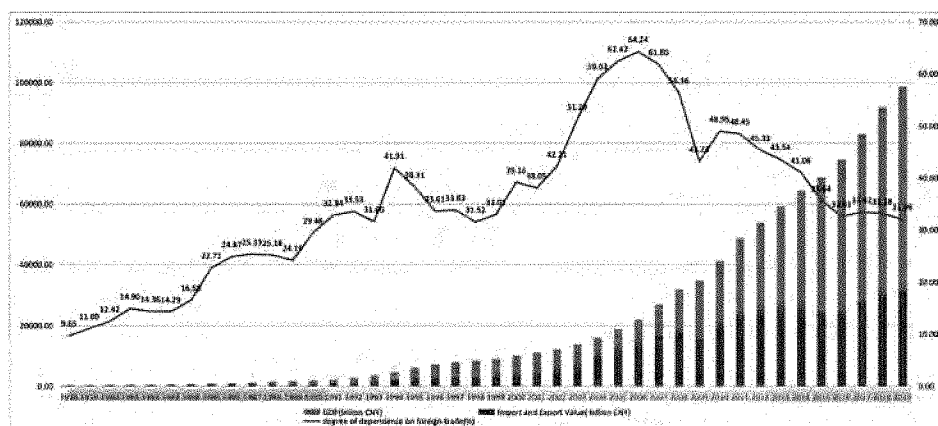


Figure 1: Import and export value and its ratio to GDP in four phases of SEZ development

Despite the economic success of SEZs in China, challenges to sustain SEZ success persist, including, but not limited to, the lack of horizontal linkages in SEZ governance and the absence of an overarching regulatory framework at a national level for SEZ regulation.

B. Experience of India

1. Evolving SEZ Policies in India

India's oldest SEZs were in the form of Economic Processing Zones, the first of which was the Kandla EPZ in 1965, which became renowned as the first SEZ in Asia.¹¹ Several other Export Processing Zones were set up in various parts of India in the subsequent years. The lack of a good economic policy from the Government of India and inefficient management soon became detrimental factors for the success of these Export Processing Zones. Thus, the performance of these Export Processing Zones in India fell short of expectations.

While these EPZs had a similar structure to SEZs, the government began to establish SEZs in 2000 under the Foreign Trade Policy to address the infrastructural and bureaucratic challenges that were seen to have limited the success of EPZs. India's SEZs were structured closely to China's successful model. With a view to overcoming the shortcomings experienced due to the multiplicity of controls and clearances, absence of world-class infrastructure, and an unstable fiscal regime, and with the aim of attracting larger foreign investments in India, the Special Economic Zones (SEZs) Policy was announced in April 2000. This policy intended to make SEZs an engine for economic growth supported by quality infrastructure complemented by an attractive fiscal package, both at the Centre and the State level, with the minimum possible regulations. SEZs in India functioned from November 2000 to February 2006 under the provisions of the Foreign Trade Policy, and fiscal incentives were made effective through the provisions of relevant statutes.

To instill confidence in investors and signal the government's commitment to a stable SEZ policy regime and with a view to imparting stability to the SEZ regime, thereby generating greater economic activity and employment through the establishment of SEZs, the Special Economic Zones Act was passed in 2005. The Act came into force along

¹¹ Kasturi Bhagat, *Implementation of Labor Laws Inside SEZs in India: A Perfect Example of Economic Development Versus Social Security*, 5(2) IUP Law Review 32, 32 (2015).

with the SEZ Rules in 2006, and this became one of the biggest pushes for industrial development in the history of India. The main objectives of the SEZ Act are:¹²

- » generation of additional economic activity
- » promotion of exports of goods and services
- » promotion of investment from domestic and foreign sources
- » creation of employment opportunities
- » development of infrastructure facilities

It is expected that this will trigger a large influx of foreign and domestic investment in SEZs, in infrastructure and productive capacity, leading to the generation of additional economic activity and the creation of employment opportunities. A Single Window SEZ approval mechanism was also provided.

The SEZ Rules provide for different minimum land requirements for different classes of SEZs. Every SEZ is divided into a processing area where only the SEZ units would be established, and the non-processing area where the supporting infrastructure is to be developed. The SEZ Rules provide for:¹³

- » Simplified procedures for development, operation, and maintenance of the Special Economic Zones and for setting up units and conducting business in SEZs;
- » Single window clearance for setting up of an SEZ;
- » Single window clearance for setting up a unit in a Special Economic Zone;
- » Single window clearance on matters relating to Central as well as State Governments;
- » Simplified compliance procedures and documentation with an emphasis on self certification.

Indian SEZ policy provides for the development of these zones in the government, private, or joint sectors. 100 percent FDI is permitted for all investments in SEZs, except for activities included in the negative list. SEZ units are required to be net foreign-exchange earners. Goods flowing into the SEZ area from a domestic tariff area (DTA) are treated as exports, while goods coming from the SEZ into a DTA are treated as imports. Indian SEZs are exempt from paying any income tax. SEZ policy also provides enterprises and

¹² See The Special Economic Zones Act, at <https://www.indiacode.nic.in/bitstream/123456789/2042/3/a2005-28.pdf> (Last visited on August 7, 2023).

¹³ *Id.*

developers with a favorable and attractive range of incentives. It is worth noting that some of these incentives are not available to units that are set up in DTAs, and thus the SEZ policies, by definition, are discriminatory compared to the other local units set up in the country. However, in India, these exceptional treatments are allowed for SEZs as they undertake legally binding commitments that everything they produce in the zone shall be exported. In case some goods are supplied to the domestic market, appropriate duties with interest on the inputs used must be paid before the goods leave the SEZ.

Indian SEZs are also not without controversies and disputes. A major controversy surrounding the implementation of the Special Economic Zone scheme has been the manner in which the government acquired the land for developing SEZs. Since developing Special Economic Zones involves massive land procurement, which can lead to the displacement of farmers, it has created conflicts between industry, governments, farmers, and civil society. Therefore, state governments were advised that in land acquisition for Special Economic Zones, the first priority should be for the acquisition of waste and barren land, and if necessary, single-crop agricultural land. A new National Policy on Rehabilitation and Resettlement 2007 was introduced, which provided land-for-land compensation for the acquisition of land for development purposes, including Special Economic Zones, and employment for at least one person from each affected family. A National Rehabilitation Commission was set up by the Central Government, duly empowered to exercise independent oversight over the rehabilitation and resettlement of the affected families. Furthermore, wage employment would be provided to the willing affected persons in the construction work of the project. The policy also ensures housing benefits, including houses for landless affected families in both rural and urban areas. Adequate provisions have been made for financial support to the affected families for the construction of cattle sheds, shops, working sheds, transportation costs, temporary and transitional accommodation, comprehensive infrastructural facilities, and amenities in the resettlement area, including education, healthcare, drinking water, roads, electricity, sanitation, religious activities, cattle grazing, and other community resources. A robust grievance redressal mechanism has also been prescribed. This policy aims to strike a balance between the need for land for development purposes and protecting the interests of landowners and other displaced people.

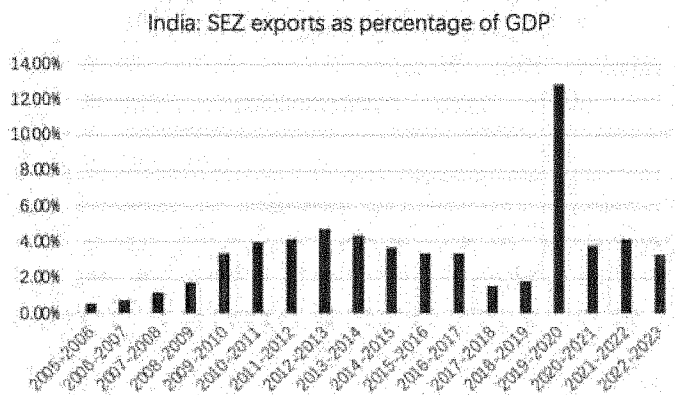
2. The Performance of Indian SEZs

As of November 22, 2022, formal approval has been granted for 424 SEZs by the Board of Approval since the formulation of SEZ Rules in 2006. Currently, there are 270

operational SEZs as of the date of writing, with 5,620 units operating within these SEZs, including those established before the SEZ Rules. These SEZs cover a variety of sectors, such as agro-based products, automobile manufacturing, mineral-based industries, biotechnology, electronic products, footwear, gems and jewellery, IT/ITES, textiles, multi-product multi-services, pharmaceuticals, and power, among others.

In India, SEZs have attracted a cumulative investment of Rs. 6,457,852 million (equivalent to around US \$100 million) as of November 22, 2022. SEZs have also generated employment opportunities for 2,807,256 individuals to date. During the fiscal year 2021–2022, SEZs contributed to a total export value of \$133 billion, and from April to October 2022, the total exports reached \$87.75 billion. Physical exports from SEZs witnessed a 30% growth in the 2021–2022 periods.¹⁴

The contribution of SEZ exports to India's GDP is depicted in the figure below. It is evident that, on average, the share of SEZ exports from 2005 to 2022 remained around 4%, with the exception of 2019–2020. SEZs established under SEZ law have largely succeeded in achieving their objectives of promoting exports, increasing investment, and improving employment.



II. DIFFERENCES BETWEEN SEZ POLICIES IN CHINA AND INDIA

This section compares and analyzes the SEZ policies of China and India, exploring their legal frameworks, incentives, regulations, and overall effectiveness. One of the most

¹⁴ See Department of Commerce, Annual Report, at <https://commerce.gov.in/wp-content/uploads/2023/03/Annual-Report-FY-2022-23-DoC.pdf> (Last visited on August 7, 2023).

important similarities between China and India's SEZ policies is that both countries offer tax breaks and other financial incentives to businesses that invest in SEZs. These incentives can include reduced corporate taxes, import duty exemptions, and accelerated depreciation allowances. It is worth noting that since China's accession to the WTO, the country has gradually and significantly reduced the number of subsidies that are contingent on export performance to comply with WTO norms,¹⁵ particularly those set out in the Agreements on Subsidies and Countervailing Measures (SCM Agreement). The recent case brought against India regarding zone-specific subsidies provides a lesson for developing economies using SEZs to boost their economy. This will be elaborated in the later part of the article.

In addition, both China and India's SEZ policies allow for greater flexibility in terms of foreign investment regulations. For example, businesses operating in SEZs may be allowed to own 100% of their operations, which is not always the case in other parts of the country. The SEZ policies of both countries emphasize the importance of infrastructure development. SEZs are often located in areas with good transportation links and access to utilities. This helps ensure that businesses operating in SEZs have the resources they need to be successful.

Despite their respective economic performances and the common incentives offered to firms inside SEZs, the SEZ policies between the two emerging countries have striking differences, from overarching design to policy details.

The initial SEZs created by China were built in coastal regions with easy access to ports and transportation networks to ensure they are "most likely to succeed." Such models were only transplanted to inland cities after years of trial testing and when the overall transportation infrastructure networks of the entire country were significantly improved. In India, no restrictions on the geographic location have been imposed on SEZs. It is also noted that stimulating foreign investment was not a key objective for India's EPZs, unlike that of China. In the initial stage of SEZ development and before India liberalized its trade in 1991, EPZs were conceived more "as a means of providing relief to domestic exporters from the regulatory regime."¹⁶ This could partially explain the

¹⁵ See WTO, India-Export Related Measures, at <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/DS/541-7.pdf&Open=True> (Last visited on February 14, 2023).

¹⁶ ASHOK KUNDRA, THE PERFORMANCE OF INDIA'S EXPORT ZONES: A COMPARISON WITH THE CHINESE APPROACH (2000), at <http://opac.cshr.cmb.ac.lk:8080/jspui/handle/123456789/809> (Last visited on February 14, 2023).

geographic fragmentation of SEZs in India and their controversies with mixed results and challenges.¹⁷

China's SEZs are generally established in large open territories covering entire districts or cities and even spanning geographic units. SEZs in India vary in size, with some being fenced-in zones, the smallest being 1 hectare. The fragmentation of SEZs in India is less likely to achieve social and economic spill-over effects in neighboring districts not participating in the SEZ programs. In China, when local governments are assigned a given area SEZ status, they are credited with more discretion to design their own SEZ policies and preferential fiscal regulations based on their special needs to attract foreign investment and domestic firms. In contrast, in India, firms can submit an application to establish an SEZ, which is reviewed by state and local governments and must be approved by the Board of Approval.

The Indian government also allows private firms to develop an SEZ. In other words, the SEZ status can be assigned to a single firm in India. This has led to the establishment of SEZs in various regions across the country. In contrast, in China, the government is responsible for designating SEZ status and assigns it to specific areas. China's place-based policies, driven by overarching strategic designs, have demonstrated clear advantages for firms located within these zones, resulting in significant regional aggregation and spill-over effects.

A. Legal Framework: Legislative Basis and legal Provisions Governing SEZs in China

Regulations at national level providing an overarching legal framework for the establishment, operation, and management of SEZs in the country include:

(1) Law of the People's Republic of China on Foreign-Funded Enterprises (2000)¹⁸

¹⁷ AKASH PODISHETTI, WHY HAVE SPECIAL ECONOMIC ZONES (SEZ) NOT TAKEN OFF IN INDIA? BUSINESS STANDARD, at https://www.business-standard.com/podcast/current-affairs/why-have-special-economic-zones-sez-not-taken-off-in-india-122070700036_1.html (Last visited Feb 14, 2023).

¹⁸ This law was referred to in the subsequent Decisions governing administrative measures of FTZs, including the Decision of the Standing Committee of the National People's Congress on Authorizing the State Council to Temporarily Adjust the Relevant Administrative Approval Items Prescribed in Laws in China (Guangdong) Pilot Free Trade Zone, China (Tianjin) Pilot Free Trade Zone, China (Fujian) Pilot Free Trade Zone, and the Extensions of China (Shanghai) Pilot Free Trade Zone (2015), and many of the provisions set the basis for treatment of foreign investment in SEZs.

(2) Decision of the Standing Committee of the National People's Congress on Administrative Examination and Approval for Authorizing the State Council to Temporarily Adjust Relevant Legal Provisions in the China (Shanghai) Free Trade Zone (2013)

(3) Decision of the Standing Committee of the National People's Congress on Authorizing the State Council to Temporarily Adjust the Relevant Administrative Approval Items as Prescribed in Laws in China (Guangdong) Pilot Free Trade Zone, China (Tianjin) Pilot Free Trade Zone, China (Fujian) Pilot Free Trade Zone, and the Extensions of China (Shanghai) Pilot Free Trade Zone (2015)

(4) Catalogue of Industries Encouraged for Foreign Investment (2017, further expanded in 2019 and 2022)

(5) Decision of the Standing Committee of the National People's Congress on Authorizing the State Council to Temporarily Adjust the Application of Relevant Legal Provisions in Pilot Free Trade Zones (2021)¹⁹

The Law on the Promotion of Foreign Investment also provides important provisions regarding Special Economic Zones (SEZs). It clarifies the legal status of SEZs and sets out the general rules and regulations that apply to foreign investment in SEZs. The Catalogue of Industries Encouraged for Foreign Investment identifies industries where FDI will be welcomed and treated with favorable policies in China. It also provides policies that promote foreign investment, particularly in SEZs. Several Decisions of the Standing Committee of the National People's Congress, authorizing the State Council to temporarily adjust the relevant administrative approval items prescribed in laws in different Free Trade Zones (FTZs) in recent years, provide test grounds for further optimizing the business environment, stimulating market vitality, and speeding up the transformation of government functions.

It is worth noting that instead of unified legislation on SEZs, China's SEZ legislations are zone-specific, allowing for flexibility and autonomy for local governments of SEZs to make their own rules and policies in response to their respective needs. In fact, ordinary

¹⁹ Decision of the Standing Committee of the National People's Congress on Authorizing the State Council to Temporarily Adjust the Implementation of Relevant Provisions of Laws in Pilot Free Trade Zones (Adopted at the 28th Meeting of the Standing Committee of the Thirteenth National People's Congress on April 29, 2021) (China).

Chinese local regulations cannot contradict laws made by the national legislature or administrative regulations made by the State Council (the central government). The flexibility and legislative power delegated to each of the subnational legislatures under their respective authorization decisions of the NPC Standing Committee allow local legislatures to make adaptations to provisions of national laws and regulations and to local regulations. For instance, on June 10, 2021, the NPC Standing Committee issued an authorization decision granting the Shanghai Legislature the power to formulate regulations concerning the Pudong New Area. On the same day, the NPC Standing Committee also adopted the Law on Hainan Free Trade Port.²⁰

The zone-specific SEZ regulations define the basic principles and policies of individual SEZs and set out the specific incentives and benefits available to businesses operating in SEZs.

India enacted the Special Economic Zones Act to regulate the establishment, operation, and management of SEZs. The act provides legal provisions and guidelines for SEZ development in the country. The rules and articles of SEZ laws in India are governed by the following legislation:

- (1) Special Economic Zones Act, 2005
- (2) Special Economic Zones Rules, 2006
- (3) Special Economic Zones (Procedure for Approval and Development of) Rules, 2006
- (4) Special Economic Zones (Tax Exemption) Rules, 2006
- (5) Special Economic Zones (Deferment of Payment of Customs Duties) Rules, 2006

The Special Economic Zones Act, 2005, is the most important piece of legislation governing SEZs in India. It establishes the legal framework for SEZs and sets out the specific incentives and benefits available to businesses operating in SEZs. The Special Economic Zones Rules, 2006, provide detailed procedures for the establishment and operation of SEZs. They specify the requirements that need to be met to establish

²⁰ THE NATIONAL PEOPLE'S CONGRESS, CHINA'S TOP LEGISLATURE ADOPTS MULTIPLE LAWS AS STANDING COMMITTEE SESSION CONCLUDES, at <http://www.npc.gov.cn/englishnpc/c23934/202106/778ecb5060334394a496cb56698814f0.shtml> (Last visited on August 25, 2023).

an SEZ and the authorities responsible for approving SEZ proposals. The Special Economic Zones (Procedure for Approval and Development of) Rules, 2006, outline the procedures for the approval and development of SEZs. They specify the documents that must be submitted to obtain approval for an SEZ and set out the timeframes for the approval process. The Special Economic Zones (Tax Exemption) Rules, 2006, provide tax exemptions for businesses operating in SEZs in India. These exemptions include income tax exemption on profits and gains derived from authorized operations in SEZs for a period of five years, renewable for a further five years; customs duty exemption on the import of capital goods, raw materials, and consumables for authorized operations in SEZs; and excise duty exemption on goods produced or manufactured in SEZs for export. The Special Economic Zones (Deferment of Payment of Customs Duties) Rules, 2006 (SEZ Deferment of Payment Rules), allow businesses operating in SEZs to defer payment of customs duties on imported goods for up to two years. This deferment is available for goods used in the manufacture of goods for export. The SEZ Tax Exemption Rules and the SEZ Deferment of Payment Rules are important incentives designed to attract foreign investment and promote economic development in SEZs in India.

While both China and India have enacted legislation for SEZs, there are differences in their legal frameworks. China's SEZ laws are more comprehensive and address various aspects of SEZ operations in a piecemeal nature, whereas India's legal framework primarily focuses on the establishment and operation of SEZs.

B. Objectives and Incentives behind the Establishment of SEZs in China

China aimed to attract FDI, promote exports, and foster economic development through the establishment of SEZs.²¹ The objectives included technology transfer, job creation, and the development of industrial clusters. China offered a range of incentives to SEZs, including tax benefits, streamlined customs procedures, preferential land policies, and infrastructure support. Additionally, SEZs in China enjoyed regulatory flexibility and a more business-friendly environment.

²¹ Resolution of the Standing Committee of the Fifth National People's Congress on Approving the "Regulations on the Special Economic Zones of Guangdong Province" (promulgated by the Standing Committee of the National People's Congress, Aug. 26, 1980, effective Aug. 26, 1980) (China); Resolution of the First Session of the Seventh National People's Congress on the Establishment of the Hainan Special Economic Zone (promulgated by the National People's Congress, Apr. 13, 1988, effective Apr. 13, 1988) (China); State Council's Instructions on "Minutes of the Meeting of Guangdong and Fujian Provinces" (promulgated by the State Council, May 16, 1980, effective May 16, 1980)(China); Interim Regulations of the State Council on Reducing and Exempting Enterprise Income Tax and Business Tax in Special Economic Zones and Fourteen Coastal Port Cities (promulgated by the State Council, Nov. 15, 1984, effective Dec. 1, 1984)(China).

India's objectives for SEZs were similar to China's, emphasizing FDI attraction, export promotion, and employment generation. SEZs were seen as engines for economic growth, regional development, and the enhancement of manufacturing capabilities. India provided incentives such as tax exemptions, duty-free imports, simplified customs procedures, and infrastructure support to SEZs. Special fiscal and regulatory benefits were granted to attract investments and promote export-oriented industries.

C. Regulatory Framework: Administrative Bodies

In China, SEZs are governed by various administrative bodies, including the State Council, local governments, and specialized authorities like the China SEZ Authority. These bodies oversee the establishment, management, and coordination of SEZs with other government agencies. China's regulatory framework for setting up SEZs involves a comprehensive process, including feasibility studies, project approvals, land acquisition, and infrastructure development. The framework ensures coordination among government agencies and promotes a conducive environment for SEZ development. China's regulatory framework for SEZs is more streamlined and efficient, with a well-coordinated approach among various government agencies. In contrast, India's regulatory framework is perceived as complex, involving multiple approvals and compliance requirements.

India's SEZs are regulated by the Ministry of Commerce and Industry and implemented by the Development Commissioners in each SEZ. These administrative bodies monitor and facilitate SEZ operations, including approvals, clearances, and compliance. India's regulatory framework for establishing SEZs requires developers to submit proposals to the government for approval. The framework includes land acquisition, infrastructure development, and compliance with environmental and labor regulations.

D. Challenges Faced by SEZs and Suggestions

China's SEZs have encountered challenges related to rising labor costs, environmental concerns, industrial upgrading, and maintaining competitiveness in a changing global economic landscape.²² Overreliance on export-oriented industries has posed risks during economic downturns. China's SEZs face challenges related to sustaining competitiveness and adapting to changing market dynamics, while India's SEZs grapple with fundamental

²² XI JINPING, PRESIDENT, CHINA, SPEECH AT THE CELEBRATION OF THE 40TH ANNIVERSARY OF THE ESTABLISHMENT OF SHENZHEN SPECIAL ECONOMIC ZONE, PEOPLE'S DAILY (OCT. 14, 2020), at <http://cpc.people.com.cn/n1/2020/1014/c64094-31892124.html> (Last visited on August 9, 2022).

issues of infrastructure development and regulatory bottlenecks. SEZs in India encounter challenges such as land acquisition issues, slow infrastructure development, policy uncertainties, and complex regulatory processes. These challenges hinder the smooth functioning and overall performance of SEZs.

China's successful experiences with SEZs highlight the importance of comprehensive planning, strong infrastructure development, regulatory flexibility, and the need for continuous innovation and upgrading. India's experiences emphasize the significance of addressing infrastructure gaps, streamlining regulatory processes, and providing stable and predictable policies. To further enhance SEZ policies in China, it is recommended to focus on sustainable development, promoting innovation and technology-driven industries, addressing environmental concerns, and diversifying SEZs' economic base. Continued efforts to streamline regulations and provide a business-friendly environment would also be beneficial.

For India, key recommendations include addressing land acquisition challenges, accelerating infrastructure development, simplifying regulatory processes, and providing long-term policy stability. Additionally, fostering sector-specific SEZs, promoting skill development, and encouraging innovation-driven industries can contribute to the success of SEZs in India.

III. CONFLICTING LEGAL IMPLICATIONS OF SEZs: WITH DOMESTIC POLICIES AND INTERNATIONAL OBLIGATION

SEZs are areas where rules deviate from the rest of the country to promote strategic development and catalyze broader economic transformation. Although the impact of the SEZ policy has been positive in terms of stimulating the economy, SEZs often involve shifts in regulatory powers in the legislature and significant room for executive discretion. As a result, SEZs raise questions about their legal regime at both the domestic policy level and within international economic law, and the results have been mixed.

A. Potential Conflict with Domestic Industry Policies

In general, SEZs are geographical regions within the territory of a state that benefit from relaxed regulations compared to the rest of the country. The SEZ policy discriminates against domestic industries in favor of those that are set up in SEZs. As stated earlier, SEZ units receive the following facilities that are not available to domestic units:

Duty concession and exemption. No duties (domestic or imported) are imposed on inputs, as well as other supplies, including construction materials, etc., for SEZ units. In some countries, such duty concessions are contingent upon exports. However, for domestic units, only the reimbursement of customs duties paid on actual inputs (raw materials, etc.) is allowed in the form of duty drawback or advance remission schemes. They do not receive any other duty benefits on capital goods, machinery, or other supplies for domestic units. Even if a domestic unit exports 100 percent of its production, it is not eligible for equivalent facilities as those provided to SEZs.

Tax benefits. As mentioned, to attract investment from the private sector to SEZs, governments may offer various tax incentives. This is especially the case in India, where certain tax exemptions are not available to domestic manufacturers. For example, India allows exemptions from customs/excise duties for the development of SEZs for authorized operations approved by the Board of Approvals (BOA); income tax exemption on income derived from the business of SEZ development for a period of 10 years out of 15 years under Section 80-IAB of the Income Tax Act (the Sunset Clause for Developers became effective from 01.04.2017); exemption from Central Sales Tax (CST); and exemption from Service Tax (as specified in Sections 7, 26, and the Second Schedule of the SEZ Act). Domestic producers do not receive income tax exemptions.

Land acquisition and land use rights. The India SEZ Act of 2005 allows the government to transfer the land acquired for public purposes under the Land Acquisition Act to private companies for development. Preferential land use rights have also been granted in SEZs in China to attract investments. Land thus becomes the most significant incentive for being part of the SEZ scheme and for profit maximization. On the other hand, the operation of SEZs can affect land rights by transferring land for commercial activities without sufficient compensation. This has led to several unrests in the past by local landholders, after which the government decided not to intervene in procuring agricultural lands from farmers to be handed over to private SEZ developers. Now, developers have to negotiate with individual landholders to procure their lands.

B. Potential Conflict with International Trade and Investment Agreements:

There is no internationally accepted legal framework to regulate SEZs. The Revised Kyoto Convention delineates SEZs as any area with 'extraterritorial' elements that is

deemed, for fiscal reasons, as being outside the Customs territory.²³ This provides a legal basis for specific national customs regulations to establish and operate SEZs, including their customs controls and the admission of goods. However, the incentives offered to recipients located within SEZs confer an advantageous position over other firms in the marketplace, thus creating potential tensions between domestic regulatory spaces and multilateral, as well as bilateral, trading rules.

1. SEZ in the context of a Multilateral Trade Agreement

WTO disciplines relevant to SEZs include, but are not limited to, non-discrimination, subsidies, trade-related investment measures, and trade-related intellectual property rights,²⁴ and the majority of discussions have centered on the application of the WTO SCM Agreement. Concerns have also been observed in the accession documents of most acceding members, explaining their SEZ policies, how their zone-based incentives are consistent with WTO Agreements, and their commitment to avoiding SEZ-related subsidies linked to local content and exportation requirements.²⁵

As part of its Accession Protocol, China pledged to apply the provisions of the WTO Agreement and Protocol to ‘the entire customs territory of China, including border trade regions, and minority autonomous areas, SEZs, open coastal cities, economic technical development zones, and other areas where special regimes for tariffs, taxes, and regulations are established (collectively known as special economic areas).’ China also committed to transparency requirements should some preferential arrangement for its SEZs be sustained.²⁶

According to the SCM Agreement, a measure is defined to be a subsidy if: (a) there is a financial contribution; (b) the contribution is provided by a government or any public body within the territory of a Member; and (c) the contribution confers a benefit.²⁷ The

²³ See Revised Kyoto Convention, *supra* note 2. See Sherzod Shadikhodjaev, *International Regulation of Free Zones: An Analysis of Multilateral Customs and Trade Rules*, 10(2) World Trade Review 189, 189 (2011).

²⁴ *Id.*; See Sherzod Shadikhodjaev, *SEZs under the WTO's Scrutiny: Defining the Scope of Trade Issues*, in *International Economic Law and the Challenges of the Free Zones*, at 213 (Alphen Aan Den Rijn (The Netherlands): Kluwer Law International, 2019); Julien Chaisse & Xueliang Ji, *The Pervasive Problem of Special Economic Zones for International Economic Law: Tax, Investment, and Trade Issues*, 19(4) World Trade Review 567, 567 (2020).

²⁵ Shadikhodjaev, *supra* note 19.

²⁶ Article 2 (A) of Protocol on the Accession of the People's Republic of China.

²⁷ Article 1.1(a)(1) of Agreement on Subsidies and Countervailing Measures; Annex 1A of Marrakesh Agreement Establishing the World Trade Organization [hereinafter SCM Agreement].

SCM Agreement also provides a list that constitutes financial contributions, including (i) a direct transfer of funds; (ii) the foregoing of revenue otherwise due (fiscal incentives); (iii) the provision of goods or services other than for general infrastructure; and finally, (iv) if the entity is a private entity entrusted to or directed by a government or public body to make the above financial contribution.²⁸ Tax incentives and other preferential fiscal treatment, including land-use rights applied to SEZs, may fall under any of the aforementioned categories of financial contributions. For instance, China's zone-specific governmental legislation, including tax incentives, low-cost loans, special land use rights, and discounted electricity rates, among others, were raised by Mexico as financial contributions that provide a preferential benefit.²⁹ Although the litigation ended during consultation, the matter raises a bell for SEZ-related incentives that will require examination under the SCM Agreement. It is worth noting that China's new generation of SEZs has shifted the focus from traditional export-oriented fiscal incentives to other incentives, including incentives linked to investment in research and development, a more favorable regulatory environment, greater flexibility to attract skilled labor, and streamlined administrative procedures. Most of the SEZ preferential policies that were inconsistent with the WTO rules have faded away after China's accession to the WTO and the improvement of the market system in the early 2000s.

The controversies surrounding India's SEZ incentives are more pronounced. In the October 2019 report, the WTO ruled against India in a dispute filed by the USA, claiming that five Indian export promotion initiatives for SEZs were in violation of certain provisions of the SCM Agreement. Among the fiscal provisions at stake in the dispute *India—Export Related Measures* at issue are: the exemption of entrepreneurs from customs duties on imports into and exports from an SEZ; the exemption of goods imported into an SEZ by a unit or developer from India's Integrated Goods and Services Tax (IGST); and the deduction of the export earnings of an entrepreneur's SEZ unit from the corporate income tax base.³⁰ This further raises concerns over tensions between unilaterally provided incentives to SEZs and members' obligations under the SCM Agreement. With developing countries phasing out subsidies that are not WTO-compatible, the SCM Agreement has become increasingly relevant to a great number of emerging countries, but the risk of SEZs falling victim to such disputes subsequently rises. Therefore, it is necessary to examine whether an SEZ scheme is inconsistent

²⁸ Id., Article 1.1(a)(1)(i)–(iv).

²⁹ See WTO, China—Measures Relating to the Production And Exportation of Apparel and Textile Products, WTO Doc. WT/DS451/1, at file:///C:/Users/LJ/Downloads/GEN103.pdf (Last visited on August 1, 2023).

³⁰ *Supra* note 13, ¶7.145.

with multilateral trade rules. The Ministry of Commerce of India has already set up a committee tasked with formulating WTO-compliant alternatives to the existing disputed export subsidies under its SEZ scheme. India is actively considering introducing smart WTO-compliant subsidies rather than foreign exchange earnings.³¹

In summary, SEZs have unique configuration incentives that need to be compatible with WTO rules. They need to be administered in such a way for a diverse range of enterprises located within SEZs in India and China, as well as in other emerging economies that are export-oriented. Subsidies could be potentially challenged as de facto export subsidies, if not de jure. There is no one-size-fits-all approach to SEZs since their planning, development, and operations are highly contextualized,³² so the support underlying SEZ programs needs to be examined on a case-by-case basis. It is important for members to devise a unilateral SEZ law consistent with multilateral trade values and norms while adopting a cautious approach to running their operations smoothly.

2. SEZs in the context of Investment Treaties

SEZs are widely used as investment promotion tools. The experiences of both India and China have demonstrated how SEZs have successfully generated investment. The WTO Agreement on Trade-Related Investment Measures (TRIMs) does not mention SEZs either, but is also relevant to a country's SEZ policy. Under TRIMs, local content requirements or import-export balancing requirements are not allowed, with a carve-out for developing and least developed countries, which was phased out in 2020.³³ Since China's accession to the WTO, such requirements were gradually eliminated to meet the country's obligations. As a member of the WTO, India is also not eligible to apply such provisions to its SEZs.

It is worth noting that in order to promote cross-border investment, countries sign legally binding investment treaties to provide protection to each other's investors against adverse conduct by public authorities. Investment treaties primarily say little or nothing about

³¹ See ASIT RANJAN MISHRA, COMMERCE MINISTRY SETS UP PANEL TO MAKE SEZ POLICY COMPATIBLE WITH WTO RULES, MINT (2018), at <https://www.livemint.com/Politics/LWcIXS4l3aQpEhCp8cdahJ/Commerce-ministry-sets-up-panel-to-make-SEZ-policy-compatible.html> (Last visited on August 1, 2023).

³² Douglas Zhihua Zeng, *The Past, Present, and Future of Special Economic Zones and Their Impact*, 24(2) *Journal of International Economic Law* 259, 259 (2021).

³³ Article 5 of Agreement on Trade-Related Investment Measures [hereinafter TRIMs Agreement]; Annex 1A of Marrakesh Agreement Establishing the World Trade Organization.

SEZs. To date, international investors have initiated over 20 arbitrations over diverse aspects of SEZ-related investment.³⁴

One issue that needs to be considered under investment treaties is expropriation. When governments establish zones to promote trade and investment with a “public purpose,” expropriation may be inevitable. Landholders often have limited opportunities to negotiate over an overarching SEZ development plan. Expropriation could also occur between a host state and a foreign investor, and there have been a number of investor-state arbitration disputes (ISDS) on SEZs regarding expropriation. Professor Julien Chaisse reviewed a number of ISDS cases brought by foreign investors challenging SEZ-related measures and concluded that governments have the right to regulate in SEZs.³⁵ With that being said, governments should be careful in designing, implementing, modifying, and revoking regulations in SEZs to avoid triggering the expropriation clause.

3. SEZs in the context of Regional Integration

The preceding decade witnessed the rapid development of SEZs, paralleled by the proliferation of FTAs. Both are consequently important policy tools that promote trade and investment for countries and within regions. FTAs are reciprocal preferential trade agreements between two or more partners; they are derogations authorized under the WTO to boost trade and further economic integration among member states.³⁶ Despite their profound economic impacts, their overlapping geographic coverage, subject-matter, and differing regulatory approaches inevitably trigger synergizing issues between them, with one representing unilateral instruments, while the other represents bilateral or multilateral instruments, respectively.

The nexus of SEZs and FTAs is complex. There is no one-size-fits-all to the synergetic mechanisms of these policy tools, and whether two tools can work positively toward a common objective depends on the context of each country and its partnered FTAs. Very

³⁴ LORENZO COTULA & LILIANE MOUAN, SPECIAL ECONOMIC ZONES: DEVELOPMENT ENGINES OR SITES OF EXPLOITATION? (2018), at <http://pubs.iied.org/17481IIED/> (Last visited on January 17, 2023).

³⁵ Julien Chaisse & Xueliang Ji, *supra* note 24.

³⁶ Article XXIV of General Agreement on Tariffs and Trade [hereinafter GATT]; Paragraph 203 of Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries (L/4903) [hereinafter Enabling Clause for Developing Countries]; Article V of General Agreement on Trade in Services [hereinafter GATS].

few FTAs remain silent on issues encountered with and between SEZs, as most of the FTAs that have tried or raised concerns have found.

As of the current date of writing, China has signed and implemented a total of 16 FTAs, and the government deems FTAs to be an effective approach to integrating itself into the global economy and strengthening economic cooperation with other economies. Among all the FTAs signed by China, the Rules of Origin that were established serve as the de facto set of rules for the treatment of all SEZ-processed products within its territory. The China-Korea FTA is the only known exception, in addition to the Rule of Origin; a special clause has been set out for the treatment of certain goods from outward processing zones³⁷ as part of a continuous effort from Korean negotiators to introduce special provisions for their outward processing zones through nearly all of Korea's FTAs that have been agreed upon and adopted in force.³⁸ India also has a similar provision in its FTA with the Republic of Korea, as in the China-Korea FTA.

IV. CONCLUSION

SEZs have proliferated over the past decade and are used as engines for development. While much debate has focused on their evolution and economic performance, laws sustaining and contesting SEZs should not be ignored. In many cases, the regulation of SEZs is used as a laboratory for reform, contingent upon different political, institutional, and economic contexts.

The SEZ policies of China and India have played significant roles in attracting investments, promoting exports, and driving economic growth. While both countries share similar objectives, there are notable differences in their legal frameworks, incentives, and regulatory approaches. China's SEZ policies have demonstrated remarkable success, showcasing the importance of comprehensive planning, favorable business environments, and continuous innovation. India's SEZs have faced challenges but offer valuable lessons on the importance of addressing infrastructure gaps and streamlining regulatory processes. By understanding the similarities, differences, and lessons learned

³⁷ Article 3.3 of China-Korea Free Trade Agreement [hereinafter China-Korea FTA].

³⁸ Jeongjoon Park, *The Evolution of Outward Processing Scheme in Korea's FTAs: The Case of the Gaeseong Industrial Complex in Korea-ASEAN and Korea-Vietnam FTA*, 23(1) *Journal of International and Area Studies* 99, 99 (2016).

from the SEZ experiences of China and India, policymakers and stakeholders can develop effective strategies for fostering economic development in their respective countries.

China and India have different experiences in their SEZ development. Despite the differences in design, institutional characteristics, and economic outcomes, there are common concerns rooted in their legal regimes that underpin their conflicts with national policy and international obligations. While there are certain disputes in the WTO regarding incentives provided to the SEZs, there seems to be no judicial scrutiny about the conflict in domestic policies—one for the domestic producers who are also exporters and the SEZ units. However, it is evident that there is some level of differential treatment given through public policies.

If not properly contemplated, it could result in the state's liability before a dispute settlement body or an investment tribunal. In this regard, policymakers should properly consider the legal regimes governing SEZs and recognize their potential conflicting regimes with both national policy and international trade and investment agreements.

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