



RESEARCH BRIEF

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New Developments in the Hainan Free Trade Zone/Port and their Implications

Jingyuan Zhou, University of Arizona

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Key Points:

- The Master Plan for the Construction of Hainan Free Trade Port and the establishment of Hainan Free Trade Port (Hainan FTP) facilitate China's domestic pro-trade/investment structural reforms.
- When fully established, the Hainan FTP aims to play an important role in economic integration at both regional and global levels.
- The implementation of the Master Plan for the Construction of Hainan Free Trade Port and the establishment of the Hainan FTP could potentially contribute to the reform of the World Trade Organization's legal framework, and to the implementation of the Regional Comprehensive Economic Partnership or even the Comprehensive and Progressive Agreement for Trans-Pacific Partnership.

Summary of Developments of Free Trade Zones and Ports

The establishment and development of free trade zones/ports (FTZs/FTPs) recently garnered international attention after the Chinese central government issued a Master Plan for the Construction of Hainan Free Trade Port (FTP Master Plan) on June 1, 2020.¹ FTZs - defined as a territory where any goods introduced are generally regarded, insofar as import duties and taxes are concerned, as being outside the customs territory² - have contributed to China's domestic policy and economic reforms, with Shanghai being the most prominent example. When the Belt and Road Initiative (BRI) was introduced in 2013, FTZs were tasked to serve (and some have successfully served since) as laboratories for domestic trade/investment facilitation measures, on the one hand, and on the other hand, to buttress the

¹ *Hainan Ziyou Maoyigang Jianshe Zongti Fang'an* (海南自由贸易港建设总体方案) [Master Plan for the Construction of Hainan Free Trade Port] (June 1, 2020), http://www.gov.cn/zhengce/2020-06/01/content_5516608.htm

² Special Annex D, Chapter 2, The Revised Kyoto Convention, World Customs Organization (Apr. 17, 2008), http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/conventions/pf_revised_kyoto_conv/kyoto_new/spand.aspx

development of the BRI.³ As of June 2020, China has established eighteen FTZs/FTPs, including in almost all coastal provinces, with the only exception being Jinlin Province.⁴ China's exploration of FTPs - defined as an upgrade of traditional FTZs with enhanced focus on the freedom of movement of personnel, capital, and goods⁵ - was delineated in an op-ed authored by the then Vice Premier Wang Yang on November 10, 2017.⁶ According to Vice Premier Wang Yang, examples of FTPs include Hong Kong, Singapore, Rotterdam, and Dubai, all of which are free trade hubs that play important roles in the global economy.⁷

Using designated areas such as special economic zones (SEZs) and FTZs/FTPs as laboratories for domestic policy reform was common prior to the initiation of the BRI. For example, Shenzhen, the 'Oriental Silicon Valley' of today, was transformed from a rural farming and fishing town located in Guangdong Province after being designated as a SEZ in 1980. It is, therefore, worth examining the policy rationale and potential impacts of the

Hainan FTZ/FTP - on an island located across the straight from Guangdong Province and famous for its tropical weather and food - the twelfth and largest FTZ now transitioning into an FTP, a regional trade, tourism, and transportation hub⁸.

Hainan became a province in 1988, the same year it was designated as a SEZ. With a population of nearly 9.45 million residents in 2019, Hainan's gross domestic product (GDP) was 530.9 billion Chinese Renminbi (approximately US\$74.93 billion),⁹ registering a 9.87% increase from that of 2018.¹⁰ Tertiary industry plays an important role in Hainan's economy, accounting for over 50% of its GDP in 2019.¹¹ In the first four months of 2020, Hainan registered US\$1.57 billion worth of exports and US\$2.29 billion worth of imports.¹²

A coastal province, Hainan is connected with neighboring Southeast Asian countries such as Brunei, Cambodia, Indonesia, Malaysia, Philippines, Singapore, Thailand, and Vietnam via maritime trade routes. Its location and proximity to both Southeast Asian countries on the international front and the Greater Bay Area

³ *Zhongguo 18 Ge Zimao Shihyanqu Jianshe Jinzhan Yitan* (中国 18 个自贸试验区建设进展一览) [A Snapshot of the Developments of 18 Free Trade Zones], BELTANDROADPROTAL (Aug. 28, 2019),

<https://www.yidaiyilu.gov.cn/sy/zlbw/100997.htm>

⁴ *Id.*

⁵ *Wangyang Renmin Ribao Zhuanwen: Tuidong Xingcheng Quanmian Kaifang Xinggeju* (“汪洋人民日报撰文：推动形成全面开放新格局”) [Wangyang Authored Article on People's Daily: Facilitating the Establishment of New Open-up Regime], CAIXIN (Nov. 10, 2017),

<http://china.caixin.com/2017-11-10/101168459.html>

⁶ *Id.*

⁷ *Id.*

⁸ *Supra* note 1.

⁹ *2019 Nian Hainansheng Guomin Jingji he Shehui Fazhan Tongji Gongbao* (“2019 年海南省国民经济和社会发展统计公报”) [2019 Hainan Province National Economic and Social Development Statistical Bulletin], Hainan Province Bureau of Statistics (Feb. 2020),

http://stats.hainan.gov.cn/tjj/tjgb/fzgb/n_790009/202003/t20200302_2755138.html. To put it in context, in 2019, Hainan's GDP accounts for approximately 0.53% of China's GDP of the same year.

¹⁰ *2018 Nian Hainansheng Guomin Jingji he Shehui Fazhan Tongji Gongbao* (“2018 年海南省国民经济和社会发展统计公报”) [2018 Hainan Province National Economic and Social Development Statistical Bulletin], Hainan Province Bureau of Statistics (Jan. 2019),

http://stats.hainan.gov.cn/tjj/tjgb/fzgb/n_71782/201901/t20190128_2282048.html

¹¹ *Supra* note 9.

¹² Statistics, Figures 8 and 9,

<http://images.mofcom.gov.cn/zhs/202006/20200615175016108.pdf>. To put it in context, Hainan's exports in the first four months of 2020 account for approximately 0.23% of the total Chinese exports and its imports account for approximately 0.37% of the total Chinese imports during the same timeframe.

(consisting of nine cities in Guangdong, Hong Kong, and Macao) on the domestic front make it an important part of the Maritime Silk Road of the BRI.¹³

In 2018, on the Thirtieth Anniversary of Establishing the Province and SEZ, the State Council and the Communist Party of China (CPC) Central Committee issued the Guiding Opinions of the CPC Central Committee and the State Council on Supporting Hainan in Comprehensively Deepening Reform and Opening Up (Guiding Opinions).¹⁴ Guiding Opinions sets forth 31 policy goals, principles, and areas of actions to transform Hainan from an FTZ to an FTP, and to serve as a laboratory for deeper economic reform and an eco-friendly, sustainable development model. The goals include specific measures on implementing the negative list and pre-establishment national treatment for foreign investments and on supporting the establishment of international commercial dispute settlement mechanisms. Guiding Opinions specifies that Hainan will be deeply involved in the BRI (with an emphasis on Southeast Asian countries)¹⁵ and developing tourism, modern services, and high-tech industries.

Building on Guiding Opinions, the FTP Master Plan aims at further exploring economic and policy reform. The FTP Master Plan contains over 60 policy designs, general principles, and some

specific measures. When fully implemented, it aims to create an enabling environment to attract more trade and investments into the Hainan FTP and further integrate Hainan into the global trading system.

Under the FTP Master Plan, Hainan FTP will become a free trade zone, where tariffs on imported goods will be eliminated, provided that goods are neither prohibited nor restricted from importation or listed in the catalogue of tariffed goods.¹⁶ Furthermore, the tariff-free goods cannot be re-sold to the mainland unless an addition of at least 30% of value is added to the goods within the Hainan FTP. The FTP Master Plan intends to cut procedures and streamline processes in customs clearance, thus reducing red tape. It sets out commitments with respect to the “negative list” and national treatment to foreign service providers, and for easing cross-border capital payments and transfer mechanisms for trade in services.¹⁷ Negative list and pre-establishment national treatment commitments are also included for inbound investments.¹⁸ In the telecommunication industry, the FTP Master Plan pledges to eliminate equity caps in value-added telecommunication businesses and to eventually open up basic telecommunication businesses. The FTP Master Plan also purports to gradually open up financial and capital markets and to facilitate the free flow of inbound and outbound

¹³ *Vision and Actions on Jointly Building Belt and Road*, BELT AND ROAD FORUM FOR INTERNATIONAL COOPERATION (April 20, 2017), <http://www.beltandroadforum.org/english/m00/2017/0410/c22-45-4.html>

¹⁴ *Zhonggong Zhongyang Guowuyuan Guanyu Zhichi Hainan Quanmian Shenhua Gaige Kaifang de Zhidao Yijian* (中共中央 国务院 关于支持海南全面深化改革开放的指导意见) [Guiding Opinions of the CPC Central Committee and the State Council on Supporting Hainan in Comprehensively

Deepening Reform and Opening Up] (Apr. 14, 2018),

http://www.gov.cn/zhengce/2018-04/14/content_5282456.htm

¹⁵ BRI is mentioned three times in Guiding Opinions.

¹⁶ *Supra* note 1.

¹⁷ *Id.* The FTP Master Plan elaborates on the “negative list” approach by listing the three modes of supply of service provided in Article I of the General Agreement on Trade in Services (GATS), namely, cross-border delivery, consumption abroad, and presence of natural persons modes as examples.

¹⁸ *Id.*

capital. It further promises to ease rules governing work-permit and visa requirements and to allow qualified foreign nationals to serve as legal representatives for business entities including state-owned enterprises, thus helping to attract foreign talents and promote exchanges. Additionally, the FTP Master Plan pledges to reduce tax rates, enhance transparency, ensure fair competition, and lessen regulatory burdens to trade, and to establish international commercial arbitration and mediation mechanisms to facilitate dispute settlements.¹⁹ Under the FTP Master Plan, tourism, modern services, and high-tech industry will be further developed in accordance to Hainan's natural resources and location.

The FTP Master Plan sets forth a three-stage implementation framework for the establishment of the Hainan FTP. The first stage (2020-2025) will focus on establishing FTP policy and legal frameworks, including Hainan Free Trade Port Law (海南自由贸易港法) and relevant regulations, and creating a positive business environment. Building on the first stage, the second stage (2026-2035) will see a finalized comprehensive legal rules and regulations governing trade and investment and the

formation of internationally competitive regulatory regime. In the third stage (2035-middle of the 21st century), the Hainan FTP will purportedly aim to become an intentionally influential free trade port.

Potential Policy Consequences of the Hainan FTP

The announcement of the FTP Master Plan comes at a time when the world is struggling to recover from a global health emergency that is causing significant economic havoc. The World Bank's "baseline forecast envisions a 5.2 percent contraction in global GDP [gross domestic production] in 2020."²⁰ Such a pessimistic view is also shared by the World Trade Organization (WTO), which projected a 32% loss of global GDP in the worst-case scenario,²¹ and the International Monetary Fund, projecting a minus 4.9 percent global growth in 2020.²² No country is spared with the economic downturn. The fragility of globalization has been exposed.²³ To respond to the pandemic, many countries initially resorted to unilateral actions and only later started coordination in multilateral forums, such as the WTO.²⁴ Consequently, the world has witnessed increased inward tendencies as countries seek

¹⁹ *Id.*

²⁰ *The Global Economic Outlook During the COVID-19 Pandemic: A Changed World*, THE WORLD BANK (June 8, 2020), <https://www.worldbank.org/en/news/feature/2020/06/08/the-global-economic-outlook-during-the-covid-19-pandemic-a-changed-world>

²¹ Trade set to plunge as COVID-19 pandemic upends global economy, WORLD TRADE ORGANIZATION (Apr. 8, 2020), https://www.wto.org/english/news_e/pres20_e/pr855_e.htm

²² *World Economic Outlook Update, June 2020, A Crisis Like No Other, An Uncertain Recovery*, INTERNATIONAL MONETARY FUND (June 24, 2020), <https://www.imf.org/en/Publications/WEO/Issues/2020/06/24/WEOUpdateJune2020>

²³ Henry Farrell & Abraham Newman, *Will the Coronavirus End Globalization as We Know It?*, FOREIGN AFFAIRS (Mar. 16, 2020), <https://www.foreignaffairs.com/articles/2020-03-16/will-coronavirus-end-globalization-we-know-it>

²⁴ For more detailed discussions on earlier actions and their consequences under the WTO rules, please see Jingyuan Zhou, *Trade Policies under Pandemic*, INTERNATIONAL ECONOMIC LAW AND POLICY BLOG (Mar. 19, 2020), <https://ielp.worldtradelaw.net/2020/03/guest-post-trade-policies-under-pandemic.html> and Jingyuan Zhou, *Facilitating WTO-compliant Responses to International Public Health Emergencies*, INTERNATIONAL ECONOMIC LAW AND POLICY BLOG (Mar. 3, 2020), <https://ielp.worldtradelaw.net/2020/03/guest-post-facilitating-wto-compliant-responses-to-international-public-health-emergencies-introduct.html>

reshoring and self-reliance.²⁵ Thus, the announcement of the FTP Master Plan and the commitments to trade and investment liberalization reflected therein reveal China's emphasis on deepening engagement. Due to the sheer size and scale of the Hainan FTP and its potential, when implementing specific rules and measures of the FTP Master Plan, the current WTO rules and protocols should be observed and followed.²⁶

With respect to the BRI more specifically, as one China scholar has acutely observed, COVID-19 has posed serious challenges ranging from disruptions to global supply chains to labor shortages.²⁷ Despite all these challenges, however, the Association of Southeast Asian Nations (ASEAN) overtook the European Union and became China's top trading partner in the first quarter of 2020, increasing trade by 6% year-on-year driven by a surge in electronics trade.²⁸ More specifically, as of April 2020, ASEAN has become Hainan's largest

trading partner.²⁹ Thus, current trade momentum will likely be strengthened as the FTP Master Plan is implemented, given Hainan's proximity to ASEAN nations, the commitment to enhancing relationship, and the focus on economic integration. Moreover, as the Hainan FTP looks to develop further and open up market access in areas including trade in the high-tech industries, the two markets - the Hainan FTP and ASEAN - will further complement each other.

One other area where the Hainan FTP will likely play an active role is in the implementation of the Regional Comprehensive Economic Partnership (RCEP). The RCEP, which is comprised of fifteen parties that have negotiated over a seven-year period,³⁰ is expected to be finalized and signed by the end of 2020.³¹ Although the exact text of this agreement is yet to be revealed, the RCEP is expected to further lower at-the-border trade barriers, address behind-the-border trade barriers, expand cooperation, and foster inclusive

²⁵ Jill Ward, *Pandemic Is Last Nail in Globalization's Coffin*, Says Carmen Reinhart, BLOOMBERGQUINT (May 21, 2020) <https://www.bloombergquint.com/onweb/reinhart-says-pandemic-is-last-nail-in-globalization-s-coffin>

²⁶ Finbarr Bermingham, *China's massive Hainan free-trade port plan raises questions over global trading rules compliance, experts say*, SOUTH CHINA MORNING POST (June 11, 2020), <https://www.scmp.com/economy/china-economy/article/3088593/chinas-massive-hainan-free-trade-port-plan-raises-questions> (interviewing international economic law scholars who cautioned about the potential issues on compliance with WTO competition rules and WTO spirits more generally).

²⁷ Matthew Erie, *BRI vs. COVID-19*, CHINA, LAW AND DEVELOPMENT (Mar. 24, 2020), <https://cld.web.ox.ac.uk/file/590881>

²⁸ Ayman Falak Medina, *ASEAN Overtakes EU to Become China's Top Trading Partner in Q1 2020* (May 15, 2020), <https://www.aseanbriefing.com/news/asean-overtakes-eu-become-chinas-top-trading-partner-q1-2020/>

²⁹ *China's Hainan sees growth in foreign trade*, XINHUA (Apr. 26, 2020), http://www.xinhuanet.com/english/2020-04/26/c_139008700.htm#:~:text=The%20province's%20oforei

<gn%20trade%20with,growth%20in%20imports%20and%20exports>.

³⁰ RCEP negotiating countries originally include the 10 ASEAN states, Australia, China, India, New Zealand, Japan, and South Korea, see https://asean.org/?static_post=rcep-regional-comprehensive-economic-partnership. However, on Nov. 4, 2019, India announced its withdrawal from the negotiation of RCEP due to concerns over Chinese imports, see Suttinee Yuvejwattana et al., *India Exits China-Backed Trade Deal 15 Nations Plan to Sign*, BLOOMBERG (Nov. 4, 2019), <https://www.bloomberg.com/news/articles/2019-11-04/biggest-asia-trade-pact-to-move-ahead-without-india-china-says?sref=YspazKpl>

³¹ (*Lianghui Shouquan Fabu*) Li Keqiang Zongli Chuxi Jizhehui bing Huida Zhongwai Jizhe Tiwen ((两会授权发布) 李克强总理出席记者会并回答中外记者提问) [(Authorized publication by the Two Sessions) Premier Li Keqiang Attended Press Conference and Answered Questions by Domestic and Foreign Journalists], XINHUANET (May 29, 2020), http://www.xinhuanet.com/politics/2020-05/29/c_1126047196.htm (hereinafter Two Sessions Press Briefing). See also *supra* note 28.

development.³² Because both the RCEP and the FTP Master Plan aim at creating a liberal trade and investment environment, such alignment would likely serve as a catalyst for the economic integration of the Hainan FTP into the broader regional economic apparatus, which in turn, would be conducive to the implementation of the RCEP. Moreover, the RCEP may contribute to the legislation of the Hainan Free Trade Port Law.

Another potential development worth noting is the role the Hainan FTP might assume in the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP).³³ In his response to a journalist's question at the Two Sessions Press Briefing, Chinese Premier Li Keqiang indicated that China has a "positive and open attitude" in joining the CPTPP.³⁴ The CPTPP, once joined, will further enhance the connection between China and CPTPP's cross-continental members, thus providing a platform to further integrate Hainan FTP into the global supply chains and economy.

At the multilateral level, the Hainan FTP may serve as a contributor to negotiations of new WTO rules on e-commerce and the potential reform of

services trade rules as it develops and gains experience through experimentation. It may provide experience on the negotiation of new rules in areas where WTO rules, under the current system, appear to be not readily available.

Conclusion

The announcement of the FTP Master Plan and the building of the Hainan FTP underscore the promotion of domestic reforms and greater engagement with the interconnected global economy. It is worth bearing in mind that the FTP Master Plan - the policy paperwork - lays out policy frameworks, goals, and principles that guide the development of the Hainan FTP. Subsequent legal frameworks and specific measures will provide more insight on the establishment and transition of Hainan into an FTP. As the FTP Master Plan unfolds, future Research Briefs will be devoted to further exploring the Hainan FTP.

Jingyuan Zhou
James E. Rogers College of Law
University of Arizona

jingyuanzhou@arizona.edu

³² *Guiding Principles and Objectives for Negotiating the Regional Comprehensive Economic Partnership*, <https://asean.org/wp-content/uploads/2012/05/RCEP-Guiding-Principles-public-copy.pdf>

³³ Effective Dec. 30, 2018. Members to CPTPP include Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico,

New Zealand, Peru, Singapore and Vietnam. As of June 2020, seven members have ratified the agreement: Australia, Canada, Japan, Mexico, New Zealand, Singapore and Vietnam.

³⁴ *Supra* note 31, Two Sessions Press Briefing.