



# RESEARCH BRIEF

No. 13/2020

## Hainan Free Trade Port: Concept, Challenges and Legislation

Zhang Mujun

Renmin University of China Law School

November 30, 2020

### Key Points:

- Free trade ports are the latest experimental practice in China's comprehensive reform and opening up.
- Hainan Free Trade Port is expected to become a regional and international economic engine, which raises significant challenges in the process of free trade port development, both internationally and domestically.
- The legislation of Hainan Free Trade Port Law will provide an initial framework for the development of the Hainan Free Trade Port, but significant issues remain.

### Introduction

Hainan was the first provincial special economic zone in China, and once again, it stands at the forefront of China's reform and

internationalization through the establishment of the Hainan Free Trade Port (HFTP). The Chinese central government released the "Overall Plan for the Construction of Hainan Free Trade Port" ("Overall Plan") on June 1, 2020 to "support Hainan to explore and advance the construction of a free trade port with Chinese characteristics." It marks a new historic stage for Hainan's construction and development. Some scholars have already stressed the potential policy consequences of the HFTP,<sup>1</sup> but to understand the future route map for HFTP development, the concept of a "free trade port" needs to be clarified.

What is a "free trade port"? The concept was first proposed in the 19<sup>th</sup> Chinese Communist Party National Congress Report in October 2017, and was further explained by the then Vice Premier Wang Yang in November of the same year.<sup>2</sup> In his article, Wang Yang suggested that the free trade port will be "the pacesetter with higher levels of

<sup>1</sup> See Jingyuan Zhou, *New Developments in the Hainan Free Trade Zone/Port and their Implications*, CHINA, LAW AND DEVELOPMENT RESEARCH BRIEF (Oct. 7, 2019), <https://cld.web.ox.ac.uk/file/487451>.

<sup>2</sup> Wang Yang (汪洋) Tuidong Xingcheng Quannian Kaifang Xingju (推动形成全面开放新格局) [Promoting the Formation of New Pattern of Full Opening-Up], THE PEOPLE'S DAILY (Nov. 10, 2017), <http://politics.people.com.cn/n1/2017/1110/c1001-29637499.html>.

openness, better business environment and stronger economic radiation for China's reform and opening-up" and will play a significant role in the innovative development of China's open economy. Wang Yang did not give a clear definition of "free trade port", but he used another concept "freeport" (自由港) to illustrate "free trade port" (自由贸易港). So, basically, it means that a "Chinese style free trade port" (中国特色的自由贸易港) will be a "freeport" under socialism with Chinese characteristics.

According to Wang Yang, a "freeport" is "a specific area located inside the border of a country (region) but outside customs territory, where goods, funds and personnel move freely in and out, and most commodities are exempt from tariffs."<sup>3</sup> Examples of a "freeport" include Hong Kong, Dubai, Singapore and Rotterdam. Although "freeport" is not a new concept, Wang Yang's definition deviates from its general meaning of emphasizing port function and location.<sup>4</sup> All of the "freeports" he used as examples are cities instead of only port areas. Obviously, in Wang Yang's view, only those international trading centers allowing people and goods to flow freely can be called a "freeport"; they are "special economic areas with the highest level of openness in the current world" (目前全球开放水平最高的特殊经济功能区). It can be inferred that "free trade port" should also be a city or larger area with the characteristics of a "freeport" instead of just a "freeport" located in or adjacent to the port.

The driver behind the construction of the HFTP is to encourage and ensure the free flow of people.

Since the 1980s, China has been exploring ways to deepen its opening up to the outside world. China's first attempt was setting up special economic zones (SEZs), which are actually more like export processing zones (EPZs), encouraging exports but restricting imports. China then realized the free movement of goods by establishing the bonded zones in the 1990s and later service trade was further opened up through free trade zones (FTZs). In FTZs, the goods are treated as outside of China's customs. However, foreigners who work and resident in FTZs are still treated as inside China's border and required to pay China's value added tax (VAT) and other business taxes under China's tax law when providing services. Since FTZs are generally small and fragmented, located in cities and difficult to separate from other areas, it is almost impossible to relax visa and immigrant policies to allow foreigners to work and reside freely in just these areas. In order to promote greater international trade and to attract more foreign talent, China needed a wider-scale approach than FTZs, with a focus on places that are both isolated from other areas and convenient for foreigners to conduct business and take up residence.

Large, but relatively independent from the mainland, Hainan Island is the best place in China to build a free trade port (FTP). China plans to turn the whole of Hainan Island into a FTP and start an island-wide customs closure operation by 2025, to allow the straightforward entry and exit of people by 2035.<sup>5</sup> The goal is to make Hainan Island

<sup>3</sup> *Id.*

<sup>4</sup> See UK Treasury and Department for International Trade, *Freeports Consultation: Boosting Trade, Jobs and Investment across the UK*, (Feb., 2020) 9.

<sup>5</sup> National Development and Reform Commission (国家发展改革委): Hainan Zimaogang 2025 Nianqian Qidong Quandao Fengguan Yunzuo (海南自贸港 2025 年前启动全岛封关运作) [Hainan Free Trade Port Will Start Island-wide Customs Closure Operation by 2025], SINA NEWS

the most accessible place in China.<sup>6</sup> By then people who are resident in HFTP will be treated as outside of China's customs, and VAT will be eliminated after the island-wide customs closure, unless otherwise provided by law. Although there is still time before the island-wide customs closure, to attract domestic and foreign expertise, Hainan has already adopted favorable policies like talent criteria without nationality limit,<sup>7</sup> long-term visas for foreign talents<sup>8</sup> and corresponding preferential personal income tax rate.<sup>9</sup>

The concept of FTP comes from "freeport", but it has been given a more Chinese sense by national leaders. The construction of the HFTP should be in line with the needs of China's reform and opening up and contribute to China's economic development, and yet the expectations contained within the FTP concept will bring both opportunities and challenges to Hainan.

### Goals and Challenges of the HFTP

The Overall Plan claims that the final development goal of the HFTP is to build a "high-level free trade port with strong international influence" by the middle of this century.<sup>10</sup> Referencing Hong Kong, Singapore, Rotterdam, and Dubai, an internationally influential free trade port should have at least three characteristics:

- 1) Become a logistics center and trading center that dominates global or regional trade activities. Hong Kong, Singapore and Dubai all have world-class seaports and airports, and Rotterdam has the largest port in Europe. During the process of developing trading centers, all these cities benefited from high quality transport links which provided a favorable trading environment and facilitated business transactions.
- 2) Become a high-level service center. Once a port becomes a transportation hub, there will be a high-volume exchange of commodity, talent, money and information which will create increasing demand for local infrastructure, finance, research and other services. To meet the needs of physical trade, service trade should also grow rapidly and create new hubs.
- 3) Become a wealth management center. Hong Kong, Singapore, Rotterdam, and Dubai are all cosmopolitan cities with high levels of modernization, urbanization and internationalization which attract a significant proportion of the world's affluent population.

To achieve this goal, Hainan must overcome multiple challenges that derive from both

CENTER (June 8, 2020), <https://news.sina.com.cn/c/2020-06-08/doc-iirczymk5832172.shtml>.

<sup>6</sup> Hainan Ziyou Maoyigang Jianshe Zongti Fang'an (海南自由贸易港建设总体方案) [Overall Plan for the Construction of Hainan Free Trade Port] (June 1, 2020), [www.gov.cn/zhengce/2020-06/01/content\\_5516608.htm](http://www.gov.cn/zhengce/2020-06/01/content_5516608.htm).

<sup>7</sup> Hainan Ziyou Maoyigang Gaocengci Rencai Fenlei Biaozhun Ji Rending Banfa (海南自由贸易港高层次人才分类标准及认定办法) [Classification and Qualification of High-end Talents in Hainan Free Trade Port] (Sept. 27, 2020), [www.hainan.gov.cn/hainan/swygyj/202009/31aae2e4f80747e48f3c9ec12915cb29.shtml](http://www.hainan.gov.cn/hainan/swygyj/202009/31aae2e4f80747e48f3c9ec12915cb29.shtml).

<sup>8</sup> Waiguoren Lai Hainan Gongzuo Xuke Guanli Fuwu Zanzing Banfa (外国人来海南工作许可管理服务暂行办法)

[Interim Measures for Foreigners Working in Hainan and Work Permit Management Services] (Dec. 31, 2019), [www.hainan.gov.cn/hainan/szfbgtwj/202001/cc7da46f3f54457d80a62062e7b45876.shtml](http://www.hainan.gov.cn/hainan/szfbgtwj/202001/cc7da46f3f54457d80a62062e7b45876.shtml).

<sup>9</sup> Hainan Ziyou Maoyigang Xiangshou Geren Suode Shui Youhui Zhengce Gaoduan Jinque Rencai Qingdan Guanli Zanzing Banfa (海南自由贸易港享受个人所得税优惠政策高端紧缺人才清单管理暂行办法) [Interim Measures of List Management for High-end Talents and Urgently-needed Talents Enjoying Hainan Free Trade Port's Preferential Policies on Personal Income Tax] (Aug. 26, 2020), [http://en.hnftp.gov.cn/policies/Document/Complementary/202008/t20200828\\_3289540.html](http://en.hnftp.gov.cn/policies/Document/Complementary/202008/t20200828_3289540.html).

<sup>10</sup> *Supra* note 3.

international and domestic issues. The most significant challenge is the increasingly conservative international environment. The development of freeports is closely related to trading liberalization and globalization. Hong Kong, Dubai and Singapore have seized the opportunity brought about by global production, and have responded to the high demand for logistics. However, the global economy has become increasingly depressed in recent years. The rise of unilateralism and protectionism increases global trade friction and market uncertainty, which is a blow to the confidence in international investment. The Covid-19 outbreak has also led to a sharp decline in international trade. According to the World Bank, the pandemic will trigger the deepest global recession in decades, and will cause low investment, an erosion of human capital through lost work and schooling, and fragmentation of global trade and supply linkages.<sup>11</sup> In this context, a new international trading center will struggle to emerge.

Domestically, the HFTP is facing intense competitive pressure. Even with the exception of Hong Kong, China already has twenty other FTZs including Shanghai, Beijing and Shenzhen. The HFTP does not have a competitive advantage compared to these zones. Although Hainan has previous experience in the construction of the

SEZ, its economic growth lags behind other areas of the country. In 2019, Hainan's GDP was 530.9 billion yuan, ranking 4th from the bottom across the nation.<sup>12</sup> Filling this economic gap will present challenges for the creation of the HFTP. In addition, it is expected to undertake regional and even national economic development tasks, for example, with the central and western regions of China which suffer from insufficient development. The central government plans to build three "new western land-sea corridors" (西部陆海新通道) to link the Silk Road Economic Belt and the 21<sup>st</sup> Century Maritime Silk Road; all three will start from different points and end at Beibu Gulf (北部湾) which located between Guangxi Province and Hainan Province.<sup>13</sup> The Yangpu Port (洋浦港), which is located on the west coast of Hainan Island, will be integrated into the Beibu Gulf Outlet (北部湾出海口). As such a key location on the Belt and Road, the HFTP is expected to support the western regions of China when participating in international economic cooperation and to advance "the western development in a new era."<sup>14</sup> These expectations will put the HFTP under great pressure.

Another problem is the course of Hainan FTP development. Ports are naturally suitable for the development of free trade, and those cities that use the port as their main or sole function are essentially "free cities."<sup>15</sup> The best example is Hong

<sup>11</sup> See The World Bank, *The Global Economic Outlook during the Covid-19 Pandemic: a Changed World* (June 8, 2020), [www.worldbank.org/en/news/feature/2020/06/08/the-global-economic-outlook-during-the-covid-19-pandemic-a-changed-world](http://www.worldbank.org/en/news/feature/2020/06/08/the-global-economic-outlook-during-the-covid-19-pandemic-a-changed-world).

<sup>12</sup> 2019 Nian Quanguo Gesheng GDP Paihangbang (2019 年全国各省 GDP 排行版) [The Ranking of China's Provincial GDP 2019] (Feb. 8, 2020), [www.sohu.com/a/371574758611449](http://www.sohu.com/a/371574758611449).

<sup>13</sup> Xibu Luhai Xintongdao Zongti Guihua (西部陆海新通道总体规划) [The Overall Plan for New Western Land-Sea

Corridors] (Aug. 2, 2019), [https://www.ndrc.gov.cn/xxgk/zcfb/ghwb/201908/t20190815\\_962256.html](https://www.ndrc.gov.cn/xxgk/zcfb/ghwb/201908/t20190815_962256.html).

<sup>14</sup> Guanyu Xinshidai Tuijin Xibu Dakaifa Xingcheng Xin Geju De Zhidao Yijian (关于新时代推进西部大开发形成新格局的指导意见) [Guideline on Advancing the Development of Western Regions in New Era to Promote Coordinated Regional Development], (May 17, 2020), [http://www.gov.cn/xinwen/2020-05/17/content\\_5512456.htm](http://www.gov.cn/xinwen/2020-05/17/content_5512456.htm).

<sup>15</sup> See Robert J. McCalla, *The Geographical Spread of Free Zones Associated with Ports* 21(1) GEOFORUM (1990).

Kong, where the entire city serves the port and carries out “freeport” policy, completing the initial capital accumulation through transit trade. The port economy and urban economy are highly integrated and both contribute to the development of the whole city. However, Hainan lacks an influential harbor and has not developed transit trade.<sup>16</sup> These deficiencies could cripple the HFTP development and the final goal may not be achieved on time.

### Legislation of HFTP Law

Due to its weak foundation and the pressing challenges the development of the HFTP faces, it is crucial to strengthen the confidence of consumers and investors. The Overall Plan makes it clear that the FTP policy and legal framework will be established by 2025, and that the Hainan Free Trade Port Law (海南自由贸易港法) will be legislated as soon as possible.<sup>17</sup>

Although the Hainan Free Trade Port Law is still being drafted, it is likely that the HFTP will be granted special legal status. At present, only the SEZs are authorized via a special law-making power to enact and enforce regulations applicable to SEZs.<sup>18</sup> The FTZs are not authorized with such power and can only make general local regulations under Article 74 of Legislation Law of

China. Since the Hainan Free Trade Port Law should be passed and enacted by the National People’s Congress and its Standing Committee, if the HFTP is given law-making powers in this regard, the legal effect of the HFTP regulations will equal SEZ regulations. Even though Hainan is also a SEZ and a FTZ, the authorization would still be of real significance, highlighting the special legal status of the HFTP.

### Conclusion

To support timely and effective trade reform, the Hainan Free Trade Port Law should provide an effective framework, which leaves ample room for policymaking yet secures policy predictability by setting principles and guidelines. Once the law is enacted, it will not only work for the HFTP, but will also serve as a reference for all FTZs. The principles established by this law will play a fundamental role in the future reform and opening-up of China. This research will be updated as the legislation develops.

---

Zhang Mujun  
Renmin University of China Law School  
Beijing, China

[zhangmujun@ruc.edu.cn](mailto:zhangmujun@ruc.edu.cn)

---

<sup>16</sup> Guanyu Zhichi Hainan Quanmian Shenhua Gaige Kaifang De Zhidao Yijian (关于支持海南全面深化改革开放的指导意见) [Guidelines on Supporting Hainan in Futhering All-

Round Reform and Opening Up] (Apr. 14, 2018), [www.gov.cn/zhengce/2018-04/14/content\\_5282456.htm](http://www.gov.cn/zhengce/2018-04/14/content_5282456.htm).

<sup>17</sup> *Supra* note 3.

<sup>18</sup> Lifa Fa (立法法) [Legislation Law of China], Art. 75.