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EDITORIAL

The Interaction between International Investment Law and Special Economic Zones (SEZs): An Introduction

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1. Introduction

Special Economic Zones (SEZs) are important vehicles of a state's economic policy to attract foreign investments. SEZs are designated areas created or supported by states to enhance economic development and to attract capital, technology, and innovation by offering economic, administrative, and fiscal benefits to companies.[1] The 2019 World Investment Report prepared by UNCTAD estimates that there are 'nearly 5,400 zones across 147 economies today, up from about 4,000 five years ago, and more than 500 new SEZs are in the pipeline.' [2] The proliferation of SEZs worldwide raises complex legal issues regarding interaction between SEZs and international and international law and policy.[3] SEZ's may open up a Pandora's box under the international economic law (IEL) as there are several complexities to be addressed herein, like, the interaction between SEZs and international tax law, especially the base erosion and profit shifting (BEPS) Action 5, the relationship between SEZs and investment agreements and the disputes raised as a consequence, incompatibility with WTO regulations while using incentives. This Special Issue focuses on the SEZs' key interaction with international law and arbitration.

With the aim to provide a more hospitable environment to the investors, the IIAs have witnessed a rapid pace of development. The key treaty concepts here serve the main purpose of protection of assets of investors abroad and facilitation of the operations of these investors in host countries, seeking to induce additional investment flows. With investor protection, another crucial characteristic of the investment regime is that of a private right to action while seeking redressal under the ISDS mechanism. Under this mechanism, investors can initiate arbitration proceedings against the authorities of a host country without having to go through any government as at times, they may infringe upon treaty obligations. This furthers the investor's independency from the judicial systems of host countries as well, since these systems may not be completely trustworthy or may not be preferred owing to various reasons.

The articles presented in this Special Issue tackle a variety of important and country-specific topics arising out of an interaction between SEZs and economic law. These topics are divided into the following sections: (2) a general regulatory framework of SEZs and its relationship with investment law, (3) China's SEZs and the dispute settlement mechanisms, (4) India's SEZs and its interaction with trade and labour policies, (5) Russia's SEZs and their evolution and (6) Jamaica's SEZs: the journey from Free Zones to modern SEZs

2. General Regulatory Framework of SEZs and its Relationship with Investment Law

The first part of the Special Issue sets the scene by analysing a regulatory framework applicable to SEZs and its interaction with the regime of international investment law. Amidst the many variations of SEZs, some are organised as free trade areas that focus on integrated development of large areas in a variety of industries while others function as export processing zones that are designed to simplify administrative procedures outside the country's customs territory. Depending on the specific circumstances of the case, international law, foreign law, domestic law or a set of rules created by the host state on purpose to govern the SEZ or their various combinations may apply.

SEZs and international investment law interact in several different ways. International investment agreements (IIA) similarly to SEZs, are concluded by states with the goal of attracting foreign investors. IIAs make no distinction between foreign investments and investments made in SEZs. Consequently, foreign investors may initiate investment claims against a host state for mistreatment in an applicable SEZ. In the past, foreign investors have challenged the revocation of fiscal and tax benefits that were provided by a state's authorities under the SEZ's regime.^[4] Such revocation may be qualified as an expropriation, as a violation of the fair and equitable treatment, as a violation of the national treatment or MFN treatment obligation etc., depending on the circumstances of the case. The relationship between international investment law and SEZs raises a number of legal and policy issues in relation to their compatibility and consistency. Some of these issues, e.g. the protection of the legitimate expectations of an investor resulting from the benefits applicable to SEZ investments, the notion of attribution in relation to SEZ authorities raise challenges concerning the coherence of SEZ legal framework and IIAs.

The aforementioned issues are addressed in the first article of the Special Issue '*Protection of Investment and Violations of Investor's Rights in Special Economic Zones*' by **Anton Tugushev**. In this contribution, the author identifies the main characteristics of SEZs and elaborates on their legal architecture. Building upon these findings, Tugushev analyses the interaction of SEZs with a legal regime of investment law by reviewing fourteen investor-state arbitration disputes (ISDS), in which investors challenged the SEZ related measures. The author observes that the violation of

investment protection standards in cases involving SEZs may serve as a subsidiary argument proving unfairness of host state's conduct, putting an additional burden on the state to defend itself in ISDS disputes. In his article '*Special Economic Zones and Regulatory Advantages: Can Investors Legitimately Expect the Freezing of Such Incentives?*', **Alexandros Bakos** continues the theme of interaction between SEZs and investment protection under IIAs by exploring the role of the legitimate expectations in the context of SEZs related disputes. The author also analyses the innovative provisions in a new generation of IIAs that may offer possibilities for positive and harmonious interaction between SEZs and investment law.

3. China's SEZs and Dispute Settlement Mechanisms

The geographical spectrum of SEZs is incredibly vast and can be found almost everywhere in the world. China has been leading in number and diversity of SEZs.^[5] Pioneering SEZs such as Shenzhen enhanced the liberalisation of the Chinese economy and helped attract foreign capital and technological know-how.^[6] Even though, the number of SEZs in China continues to grow, there has been a transition from selected tax incentives and preferential rules offered in numerous SEZs to uniform policies on market access facilitated by WTO rules.^[7] These recent developments gave rise to various legal and policy issues that have been addressed in five contributions.

The first article in this section - '*Transformative SEZ: China's Changing the Paradigm Along the "Belt and Road" in the "Greater Bay Area"*' by **Francisco José Leandro** and **Yichao Li** - introduces the history of Chinese SEZs and analyses the impact of SEZs in the construction of the Belt and Road Initiative. The authors provide substantive arguments indicating that SEZs have positively contributed to economic and social development 'as instruments for policy innovation, as apparatuses to deliver structural trade and economic change, and as tools for social and environmental sustainability.'^[8] Further, **Gianmatteo Sabatino** in '*Chinese Special Economic Zones and International Economic Law: Diversification, Expansion, Containment and Circulation of a Cryptic Legal Model*' examines the challenges for Chinese SEZs, such as the Hainan Pilot Free Trade Zone concerning harmonization and compliance with the WTO rules. **Dan Xie** and **Chengjie Wang** continue the discussion on Chinese SEZs in their article, '*A Hybrid Commercial Dispute Resolution Mechanism: New Developments and Approaches in Shanghai Pilot Free Trade Zone.*' Taking the Shanghai Pilot Free Trade Zone (SHFTZ) as a case study, the authors examine efficiency of a hybrid dispute resolution mechanism within SHFTZ as a mean of adjudication of cases by foreign investors. The role of technology in SEZs is discussed in the article '*Special Economic Zones, Legal Innovation, Technology, and IP Disputes Quo Vadis China?*' by **Piergiuseppe Pusceddu**. The author explores the Chinese approach to arbitration of technology-related disputes at the background of the legislative

developments in the Shanghai Pilot Free Trade Zone. The final contribution of this section investigates the interplay between the EU norms and Chinese investments in EU SEZs. **Sara Pugliese** in her article, '*Special Economic Zones (SEZs) in EU Port Infrastructures as a Means of Attracting Foreign Investment: How to Manage Risks to EU Strategic Interests?*' examines the EU legal framework at the backdrop of Chinese investments in the European SEZs, particularly in port areas. Pugliese advocates for the inclusion of decent labour conditions, health and the environment protection in the EU-China Agreement on Investments in order to prevent a 'race to the bottom' of EU health, environmental, and social standards.

4. India's SEZs and its Interaction with Trade and Labour Policies

In the past 20 years, there has been a significant proliferation of Indian SEZs. Following the Chinese model, the Indian SEZs were created to overcome the bureaucratic challenges that were associated with the export processing zones set up in the early 1960s.^[9] Since the enactment of 2005 SEZ Act, India was able to attract investments into the newly created SEZs, by providing fiscal and tax benefits to investors. However, a rise of SEZs has also brought new challenges, such as its coherency with the WTO rules and the weak labour protection in Indian SEZs. Two articles in this Special Issue thoroughly discuss these topics. **Arpita Mukherjee** and **Angana Parashar Sarma** examine India's SEZ policy with respect to the WTO requirements in their article '*Special Economic Zones (SEZs) and the WTO: The Case of India*'. By drawing on extensive empirical data, the authors conclude that Indian SEZs were not able to scale-up manufacturing into high-technology industries so far, primarily due to the WTO restrictions, such as the prohibition of incentive package. Mukherjee and Sarma offer sector-specific recommendations, applicable for the manufacturing and services units located in SEZs. The second article of this section addresses the relationship between the investment protection and the labor rights in SEZs. **Ferdous Rahman** in her article '*Harmonization of Workers' Welfare and Investors' Protection in Special Economic Zones of India: Regulatory Freedom and Challenges*' discusses the imbalance between on the one hand, a lack of labour protection in SEZs, where the state governments can exempt the SEZs from application of the national labor laws and on the other hand, an improved model Indian BIT that still provides an opportunity for investors to challenge the state's measures in ISDS proceedings.

5. Russia's SEZs and Their Evolution

The first attempts to set up SEZs in Russia were undertaken in early 1990s.^[10] They were not very successful because of economic crisis and instability at that time^[11] however, the situation has improved, particularly, after the adoption of the Federal Law "On Special Economic Zones in the Russian Federation" in 2005 that offered preferential regime in Russian SEZs to investors.^[12] Since then, eleven types of SEZs and various other areas with special beneficial treatment for

investors have been set up in Russia. **Andrey Petrakov** in his article, '*SEZs in Russia: Technology, Innovation and Investment*' provides an overview of a legal framework for Russian SEZs. The author also analyses the interplay of SEZs' legal regime with the protection of foreign investments. In the other article that deals with Russian SEZs - '*Russian SEZs at the crossroads of international, integrational and domestic law: how to attract investments without attracting investment claims?*' - the authors (**Ilia Rachkov** and **Sergey Bakhmisov**) stress the particularities of SEZ regulation in Russia from the point of view of public international law (including WTO law), law of the Eurasian Economic Union, and Russian domestic law. An important tool of regulation of SEZs are agreements with SEZ residents. They contain specific commitments of the Russian state (acting through its Ministry of Economic Development) and create for foreign investors legitimate expectations to the effect that the host State will maintain certain standard of treatment during certain period of time. Surprisingly, foreign investors who launched operation in Russian SEZs did not bring any claims before international investment tribunals against Russia so far. The authors noted that Russian BITs are not invoked by SEZ residents when it comes to disputes between them and the State before Russian domestic courts.

6. Jamaica's SEZs: The Journey from Free Zones to Modern SEZs

Jamaica has been undergoing a series of reforms with the objective to promote the economic development and to attract FDI. The modernization of the SEZ regime has been a part of state's reforms. In 2016, Jamaica has adopted the SEZ Act replacing the Jamaica Export Free Zones (JEFZ) Act that regulated the older model of free zones.^[13] Jamaica's transition to a modern SEZ regime has been motivated by the objectives to ensure cost effective facilitation services and trade, competitive incentive system, to ensure compliance with WTO system as well as contribution to sustainable development. **René Gayle** and **Chantal Bennett** in their article, '*Jamaica's Modern Special Economic Zones: An Opportunity for Growth and Lessons for Emerging SEZ Regimes*' analyze Jamaica's modern SEZ regime and offer key lessons for the policy development of SEZs, specifically applicable to developing states.

Comparing the Jamaican SEZ regime with other countries, such as China, Peru and Dominican Republic, the authors note that there is no one recipe for a successful SEZ policy. Nevertheless, Gayle and Bennet recommend taking into considerations: the SDGs, workforce development, infrastructure development, plans for market access and compliance with trade agreements in the process of setting up or modernising a SEZ's legal and policy infrastructure.

7. Acknowledgements

The editors are grateful to the contributors of the Special Issue, for their expertise and their kind cooperation in the editing process. We would like to

thank the editorial and publishing team of Transnational Dispute Management, for their help and great support during the preparation of this Special Issue.

Footnotes

[1] World Bank, Special Economic Zones, An Operational Review of their Impacts, CIIP (2017), p.11. <<http://documents1.worldbank.org/curated/pt/316931512640011812/pdf/P154708-12-07-2017-1512640006382.pdf>>.

[2] UNCTAD, World Investment Report 2019: Special Economic Zones, 12 June 2019, p. xii <https://unctad.org/en/PublicationsLibrary/wir2019_en.pdf>.

[3] See Julien Chaisse 'The Pervasive Problem of SEZs for International Economic Law: Tax, Investment, and Trade Issues (2020) 23(1) *World Trade Review* 79-115.

[4] See Julien Chaisse and Keith Ji 'China, Special Economic Zones, and Tax Dispute Resolution' (2018) *GlobTaxGov* <<https://globtaxgov weblog.leidenuniv.nl/2018/09/06/china-special-economic-zones-and-tax-dispute-resolution/>>

[5] J. Chaisse and J. Hu, International Economic Law and the Challenges of Economic Zones: An Introduction in J. Chaisse and J. Hu (eds), *International Economic Law and the Challenges of the Free Zones*, Alphen aan den Rijn (The Netherlands): Kluwer Law International, 2019, p. 4

[6] *Ibid.*

[7] J. Hu, From SEZ to FTZ: An Evolutionary Change Toward FDI in China in: Chaisse J., Choukroune L., Jusoh S. (eds) *Handbook of International Investment Law and Policy*. Springer, Singapore (2020), p. 1.

[8] F.J. Leandro and Y. Li, Transformative SEZ: China's Changing the Paradigm Along the "Belt and Road" and in the "Greater Bay Area, (2020), *Transnational Dispute Management*, p. 1.

[9] A. Palit, Growth of Special Economic Zones (SEZs) in India: Issues and Perspectives, *Journal of Infrastructure Development* (2010), Volume: 1 issue: 2, page(s): 133-152.

[10] A. Kuznetsov, O. Kuznetsova, The success and failure of Russian SEZs: some policy lessons, (2019). *Transnational Corporations*, Volume 26, Number 2, p. 121.

[11] *Ibid.*, p. 122.

[12] Federal Law, On Special Economic Zones in the Russian Federation (2005), July 22, 2005 N 116-ФЗ (English translation) <https://www.sezlotos.ru/upload/iblock/e6a/federal_law_n_116_fz.pdf>.

[13] Special Economic Zones Act (Act No 7, 2016), adopted 15 February 2016 <<https://japarliament.gov.jm/attachments/article/341/The%20Special%20Economic%20Zones%20Act,%202016%20No.%207.pdf>>.

[Full article here](#)

General Regulatory Framework of SEZs and its Relationship with Investment Law

Protection of Investment and Violations of Investor's Rights in Special Economic Zones

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Abstract

By its nature a Special Economic Zone (SEZ) envisages the establishment of economic relations between a state where this zone is situated and an investor which is a national of another state. These kinds of relations fall into the scope of International Investment Agreements (IIAs), including Bilateral Investment Treaties (BITs). The rights and protections of an investor of SEZ under BIT have a high potential to be breached as the state provides investors in SEZ with exceptionally preferential conditions. Considering the increasing number of SEZs in the world, enhancement of dispute resolution mechanisms in respective circumstances becomes an urgent issue for academic research and attention of practitioners. This article begins by defining the concept of SEZ and its main characteristics, before describing the legal framework and elaborating on the main reasons for disputes to arise in SEZ, as well as the options for handling such disputes. The author places emphasis on the three groups of claims which are likely to be brought by an investor against the State: expropriation claims, discrimination claims and claims alleging a breach of fair and equitable treatment standard. Notwithstanding its considerable theoretical character, this paper also identifies 14 arbitration cases, involving SEZ issues, and includes brief analysis of some of these cases.

[Full article here](#)

Special Economic Zones and Regulatory Advantages: Can Investors Legitimately Expect the Freezing of Such Incentives?

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Executive summary

Foreign investors operating in special economic zones (SEZs) may benefit from regulatory frameworks which are more favourable than the ones applicable to investors operating outside such areas. Thus, the former may regard such a favourable regulatory arrangement as an issue of fundamental importance when it comes to its decision to invest. What happens, then, if the host state changes the favourable regulatory framework applicable to an SEZ to the detriment of such investors? Could the latter argue that they had

legitimate expectations that such a framework would remain in place indefinitely or is the state entitled to regulate investment activity in such areas in the same way it would regulate its affairs outside SEZs? This article seeks to answer that question by showing that, even when it comes to SEZ-based investments, the foreign investor is not entitled to a regulatory lock-in. He cannot force the state into a regulatory purgatory, as favourable SEZ arrangements cannot amount to stabilization promises. What that investor could claim, however, is a strong entitlement to regulatory stability as long as the state's right to regulate is not paralyzed.

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China's SEZs and Dispute Settlement Mechanisms

Transformative SEZ: China's Changing the Paradigm Along the "Belt and Road" and in the "Greater Bay Area"

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Abstract

The study of Special Economic Zones (SEZ) matters as they are widely used across developing and developed economies. SEZ have received different designations and exist in many types, functions, and sizes. This paper argues that since the creation of SEZ, they have been functioning as a mechanism of de-bordering and structural advancement in the People's Republic of China (hereafter referred as China), between economies with different structures and economic performances. The SEZ modern concept appeared around the 1950s in industrial countries, as with the case of the Shannon Airport in Clare (Republic of Ireland). In China, the first SEZ appeared in Shenzhen (Shenzhen Special Economic Zone) as a consequence of the "opening-up" policies in 1979. According to the SEZ economic performance data, not all were successfully established, because the factors affecting their development are hard to disentangle from other forces, such as policies, regulations, management, and the international market context. Nevertheless, since 2013--in the context of the Belt and Road Initiative, and especially after the year of 2019, when the structural plan for the Greater Bay Area was unveiled--the SEZ are transforming themselves into "specially designed gateways" of a larger network of linkages between trade and economic agents. In this vein of thought, the authors seek to answer the following question: To what extent did Special Economic Zones contribute to the construction of the Belt and Road Initiative (BRI) along its geographical space? Furthermore, they argue in favor of an existing positive correlation between the creation of SEZ and their role as instruments for policy innovation, as apparatuses to deliver structural trade and economic change, and as tools for social and environmental sustainability. This

paper presents a methodological theoretical-inductive and constructivist perspective, combining qualitative, quantitative, and non-participated observation, and builds on authors' previous paper publications. This paper is organized in six sections: (1) Introduction; (2) How shall we understand the concept of SEZ?; (3) How did SEZ develop in China?; (4) Which are the common elements of a transformative SEZ?; (5) How SEZ play a role in the construction of the BRI?; (6) Conclusion.

[Full article here](#)

Chinese Special Economic Zones and International Economic Law: Diversification, Expansion, Containment and Circulation of a Cryptic Legal Model

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Abstract

The Special Economic Zone (SEZ or - jingjitequ) is a recognizable symbol of Chinese economic development since the opening up and reform. Today, however, the experience of the first Chinese SEZs has been almost entirely replaced by an increasing complex of legal rules addressing the demand for the expansion and diversification of development zones.

In particular, the Pilot Free Trade Zones represent the "last generation" of special zones, aimed at promoting not only domestic development, but also the trans-nationalization and globalization of Chinese economy. As such, their legal frameworks enter in a complex dialogue with both domestic legislation and the rules of international economic law.

The notion of SEZ as revitalized by Chinese experience is therefore not a solely domestic economic law instrument anymore. It instead displays an inherent transnational dimension, on different levels. On the one hand, the critical position of China within the WTO raises questions about the compliance of SEZs with international trade rules; on the other hand, China's international cooperation schemes (above all, the Belt & Road Initiative) paved the way for the diffusion of new SEZs all over the world and especially in developing countries. Are these SEZs inspired by Chinese models? If so, to what extent?

The article is aimed at describing, through referral to case studies - in particular to that of the recently established Hainan Pilot Free Trade Zone - and recent researches, the current legal regime of Chinese SEZs in relation with international trade rules. In the second place, it will assess how the trans-nationalization of such model functions and how it implies subsequent issues of harmonization with international legal frameworks.

[Full article here](#)

Hybrid Commercial Dispute Resolution Mechanism: New Developments and Approaches in Shanghai Pilot Free Trade Zone

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Abstract

The China (Shanghai) Pilot Free Trade Zone (hereinafter SHFTZ) has played an important and special role in promoting foreign investments and openness by conducting various administrative and legislative trials. Since the establishment, a hybrid commercial dispute resolution mechanism has been introduced and gradually formed within SHFTZ. This article intends to elaborate on the approaches and trends SHFTZ adopted for the experiments and provide practical means of dispute resolution that foreign investors may select to defend their rights. It examines the recent progress and issues in the establishment of such a hybrid dispute resolution mechanism by discussing the updated development and challenges in arbitration, mediation, and adjudication sequentially. It also shares points of view with foreign investors on selecting each approach. All the steps the governments, courts, arbitral institutions, and other corresponding institutions have taken may be referred to as implications for future developments in commercial dispute resolution mechanism for foreign investors.

[↪ Full article here](#)

Special Economic Zones, Legal Innovation, Technology, and IP Disputes. Quo Vadis China?

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Summary

Technology standards are an important component of modern life, as they are essential, inter alia, for the interoperability of devices. Several standards contribute to the optimal working of a technology product - such as a smartphone - and many more patents are essential to produce an item with standard-compliant features. These patents are referred to as "standard-essential patents" (SEPs). Since 1978, China has moved at a fast pace in tuning its indigenous intellectual property rights (IPRs) system to international norms. Mastering the technology standards-setting process and creating IPRs has been at the core of China's Innovation Policy after the accession to the WTO. Enforcement of IPRs, however, remains a point of contention, and has been one of the most debated academic issues.

Due to the importance of SEPs, their licensing should be informed by fair, reasonable, and non-

discriminatory (FRAND) terms. The determination of the FRAND terms is hence one of the most controversial aspects of litigating SEPs. As argued by Pentheroudakis and Baron in a 2017 JRC report, there is not a uniform culture in adjudicating such disputes, much depending on the region where the dispute is litigated. Accordingly, alternatives to litigation, such as arbitration, have been proposed and debated by scholars. Against this backdrop, the paper will discuss the broad framework of IP/FRAND arbitration, attempting at its (not easy) contextualization with the Chinese approach to IP arbitration, considering the legislative developments in the Shanghai Pilot Free Trade Zone.

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Special Economic Zones (SEZs) in EU Port Infrastructures as a Means of Attracting Foreign Investment. How to Manage Risks to EU Strategic Interests?

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Executive Summary

In recent years, SEZs have proliferated both in the EU and in emerging countries, especially in China, as a means of attracting foreign investment and promoting development. In more recent times, Chinese investors have turned their attention to European SEZs, particularly in port areas. However, the particular structure of the Chinese investor system, mainly comprising State-Owned Enterprises and Sovereign Wealth Funds, was a cause for worry among the EU Member States, uncertain whether to accept the advantages of Chinese investment or to impede them in order to avoid the risk of intrusion in their strategic interests. Starting from a reconstruction of the evolution of the SEZs, this article first examines the EU norms relevant to outlining a regulatory discipline. Secondly, investigating the peculiarities of Chinese investors and Chinese strategies to attract foreign investments, the article illustrates unilateral acts and bilateral agreement norms applied by the EU as a precaution against risks generated by foreign investments.

The study then identifies norms that could be added to the EU-China Agreement on Investments (CAI) to attract Chinese investment while maintaining control over them. Lastly, in the light of the effects of the COVID-19 emergency on future trade relations, some clauses are proposed that might well be inserted into the CAI to prevent further risk and emergencies.

[↪ Full article here](#)

India's SEZs and its Interaction with Trade and Labour Policies

Special Economic Zones (SEZs) and the WTO: The Case of India

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Abstract

In 2018, the United States (US) took India to the World Trade Organization's (WTO) Dispute Settlement Body over a number of subsidies given by India, including those given under the special economic zone (SEZ) policy. On October 31, 2019, India lost the case in the WTO and the Dispute Panel agreed that the subsidies given by India to the SEZs are prohibited subsidies under the provisions of the WTO's Agreement on Subsidies & Countervailing Measures (SCM). As a consequence, the Department of Commerce, Ministry of Commerce and Industry, has engaged in extensive consultation with multiple stakeholders to redraft the policy.

Existing studies shows that, unlike countries such as China and Vietnam, India has not been able to use its SEZ policy to (a) move up the value chain into high-value manufacturing (b) increase exports (c) attract greater FDI, and (d) integrate into the global value chains. In this context, the objective of this article is to examine India's SEZ policy with respect to the WTO requirements, the policy gaps and other issues faced by the developers and units. It draws lessons for India from the experiences of select countries, which have been successful in making their SEZ policies WTO compliant. It also makes recommendations on how to make the SEZ policy more effective so that (a) SEZs can be a key driver of India's economic growth and development and (b) it contributes to enhancing exports and value chain integration. The article is based on secondary data and information analysis and in-depth meetings with 25 stakeholders.

[Full article here](#)

Harmonization of Workers' Welfare and Investors' Protection in Special Economic Zones of India: Regulatory Freedom and Challenges

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Abstract

India revised its model bilateral investment agreement (BIT) in 2016 where it offered more restrictive protection mechanism to its foreign investors. This revision increases the regulatory

freedom of India as host state to uplift its workers' welfare. The host states commonly attract foreign investors in the Special Economic Zones (SEZs) with a comparatively more investor- friendly worker regulation therein. Hence, this freedom is limited in the SEZs. India is also not an exception.

This paper scrutinizes the regulatory flexibilities of India to uphold the workers' welfare in SEZs compromising the legitimate expectation of foreign investors under international investment law. The findings show, India enjoys more regulatory freedom as host state and also has the inclusive approach in statutory law for the workers regardless of their place of employment. Yet, the unfettered power of the state government to exempt the application of labor laws in the SEZs and delegation of offices with conflicting interests make the worker welfare unachievable.

India strategized to avoid the liability as host state to the investors with restrictive BITs but attract foreign investment simultaneously by these exemptions. However, the fewer number of BITs completed after the shift raises a doubt as to its success of the strategy.

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Russia's SEZs and Their Evolution

SEZs in Russia: Technology, Innovation and Investment

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Introduction

Russia, being one of the largest economies in the world, as well as being a member of the World Trade Organization and other integration associations, is of interest to foreign investors as a promising market. Given the fact that the widespread development of the digital economy, innovations and technologies come to the fore, investing in these spheres is a priority. In this regard, foreign investors have questions about whether there are innovative and technological SEZs in Russia? Where they are? In what legal forms is it possible to invest? Is there a minimum investment that needs to be made? What privileges and benefits can you expect? Will their rights and legitimate interests be protected? This article covers the territories under the special regime of innovation entrepreneurial activity in the Russian Federation. The author examines technological-and-innovative special economic zones, Skolkovo Innovation Center, International Medical Cluster and innovative scientific and technology centres.

The article structurally consists of seven parts. In the second part, the historical background of the formation of this legal institution in Russia is made, then there is a review of all existing territories under the special regime of entrepreneurial activity and their legal basis for functioning is revealed. Further, territories under the special regime of entrepreneurial activity, specializing in stimulating innovations and technologies are specified. In the third part, their location and period of existence are studied. In the fourth part, the requirements that a potential participant in such territory must meet are analysed: what activities he must carry out and what the minimum investment must be. The emphasis is placed on the content of the activities carried out by the participant, since due to the lack of a common terminology such terms, mentioned in the laws under study, as "research activities", "scientific and technological activities" and "technical and implementation activities" have significant differences. In the fifth part, the special legal regime for conducting business in these territories is defined since the set of exceptions from the general legal regime in each analysed territory under the special regime of entrepreneurial activity related to innovation is unique. The author introduces the main privileges and benefits that can be used by their participants. The sixth part of the article covers the issue of protecting the rights and legitimate interests of participants in territories under the special regime of entrepreneurial activity related to innovation. The seventh part - a conclusion in which the article summarizes the research findings.

[Full article here](#)

Russian SEZs at the Crossroads of International, Integrational and Domestic Law: How to Attract Investments Without Attracting Investment Claims?

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Executive summary

Russia established its first SEZs in early 1990s. Since then, Russia actively used that mechanism and set up dozens and dozens SEZs all over Russia with rather diverse regulation and mixed results. Russian's SEZs regulatory framework consists of international treaties (within EAEU and Russia's commitments in connection with its accession to the WTO) and domestic law.

This paper explains the framework in these aspects. The results of SEZs operation are mostly modest especially when it comes to foreign direct investment. SEZ's resident shall execute an agreement with the State. Does international law apply to such agreements? If so: can a foreign investor bring a lawsuit against the host State and - if so - on what basis? Can foreign law be applied to the agreements with SEZ residents? These legal

questions would be important for any foreign investor to clarify if it considers operating in a Russian SEZ (putting aside the issue of economic value and cost-benefit comparison).

[Full article here](#)

Jamaica's SEZs: The Journey from Free Zones to Modern SEZs

Jamaica's Modern Special Economic Zones: An Opportunity for Growth and Lessons for Emerging SEZ Regimes

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Abstract

Jamaica's framework for attracting investments in order to generate economic growth and create sustainable development has been through a series of reforms aimed at elevating the country to developed status. The reforms include legislation and policies designed to better manage the investment climate and keep pace with global changes. A recent reform is the development of the National Investment Policy ("NIP"). The NIP identifies Jamaica's migration from a free zone regime to a modern Special Economic Zone (SEZ) regime as part of the economic reforms done to attract and mobilize sustainable private investment flows.

Part I of this article outlines the development of Jamaica's Global Logistics Hub Initiative and the NIP, and their roles in relation to the development of Jamaica's SEZs as a measure to attract investment. In addition, the unique tools used by Jamaica to attract, facilitate and protect investment in SEZs and their potential to contribute to the development of successful SEZs is assessed. Part II illustrates the importance of ensuring that a country's SEZ regime aligns with its international obligations, including its trade agreements and international investment agreements, and other international norms, such as sustainable development. Part III analyses Jamaica's approach to the development of SEZs considering the modern challenges and opportunities, taking into account the United Nations Conference on Trade and Development's 2019 World Investment Report and the models used for successful SEZs in other countries. Through this analysis, Part III seeks to provide key lessons to be considered by any new and emerging SEZ regime, particularly developing states.

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