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SETTLEMENT OF SINO-FOREIGN DISPUTES IN CHINA'S FREE TRADE ZONES

Magdalena Łągiewska
University of Gdańsk, Gdańsk, Poland

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China is making significant efforts to comply with international standards in dispute resolution. The country has set up the China International Commercial Courts (CICC) in Shenzhen and Xi'an, while the pilot Free Trade Zones (FTZs) are developing their own mechanisms for resolving international commercial disputes. This article examines recent developments and solutions implemented in various FTZs in China. The analysis concludes that China is employing legal transplantation and reviewing various solutions to resolve disputes within the FTZs. Therefore, the FTZs are facilitating the reform of dispute resolution in China. However, there is currently no uniform national-level legislation for Sino-foreign disputes handled in the FTZs. Instead, each FTZ adopts its own dispute resolution rules, including specialized arbitration institutions and 'one-stop-shop' platforms. To encourage more parties to resolve their Sino-foreign disputes in the FTZs, a unified approach and a set of regulations are required.

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1. INTRODUCTION

China is taking decisive steps to align its dispute resolution processes with international standards. In addition to the China International Commercial Courts (CICCs) in Shenzhen and Xi'an, the pilot Free Trade Zones (FTZs) are developing their own mechanisms for resolving international commercial disputes. However, each FTZ has its own approach to dispute resolution. For example, the Shanghai Pilot Free Trade Zone (SHFTZ) has pioneered innovative rules and systems for resolving Sino-foreign disputes. The FTZ Arbitration Rules have also been widely recognised as innovative solutions for arbitration reform. Secondly, the Guangdong Pilot Free Trade Zone (GFTZ) based its dispute resolution mechanism on the Shenzhen International Arbitration Institute, incorporating measures to ensure the independence of both the arbitration institution and the arbitral tribunal. Thirdly, the Chongqing Pilot Free Trade Zone (CFTZ) has set up the Chongqing One-Stop Diversified International Commercial Dispute Resolution Centre. This provides a "one-stop shop" combining court litigation with arbitration and mediation.

This article analyses recent developments and solutions adopted within various FTZs in China. It concludes that China uses legal transplantation and the review of multiple solutions to resolve disputes within the FTZs. For this reason, the FTZs are paving the way for reform of dispute resolution in China. However, there is currently no uniform national-level legislation for Sino-foreign disputes handled in the FTZs. Instead, each FTZ adopts its own dispute resolution rules, including specialised arbitration institutions and "one-stop-shop" platforms. To attract more parties to settle Sino-foreign disputes in the FTZs, a unified approach and regulations are needed.

2. ROLE AND SIGNIFICANCE OF PILOT FREE TRADE ZONES IN MAINLAND CHINA

A Free Trade Zone (FTZ) could be defined as a special economic and commercial zone for foreign goods. In fact, such foreign goods can not only be landed, transhipped, but also stored, processed and transformed within the FTZ. The 1970s are widely regarded as a milestone in the adoption of FTZs by developing countries. At the time, they were recognised as part of economic policies driven by the desire to attract more foreign investment and technology. Since the establishment of FTZs, there have been significant improvements in job creation, technology transfer, foreign investment, and trade facilitation. FTZs have played an important role in international trade networks throughout the continuous growth of world trade [12] (p. 323).

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China's FTZs were established in the wake of institutional change, with the aim of promoting institutional reform through local opening-up and the widespread application of experimental programmes. Accordingly, goods that conform to international practices can freely enter and leave the FTZs due to the absence of tariff and non-tariff barriers. In addition, the pilot FTZs also guarantee freedom of investment, information, capital and talent flows for national treatment. This means that there is no difference between national and non-national treatment within China's FTZs. It is relatively easy to implement the so-called "open economic system experiment" throughout the FTZs [4] (p. 59).

One could also note that the pilot FTZ differs from the common FTZ. Hence, "as a national strategy for intensifying reform and opening up, it is a comprehensive pilot zone under the open economic system from the reform of the economic system to that of the system of supervision and then the administrative system; it is also the institutional experimental zone for upgrading China's economy; its significance for building China's economic system can be comparable to that of the Shenzhen Special Economic Zone established in the first round of promoting reform through opening up" [4] (p. 59).

Overall, the pilot FTZs have certain objectives to achieve, including the establishment of an investment management system based on the so-called negative list, a trade supervision system focusing on trade facilitation, a financial innovation system for capital account convertibility together with the financial services industry, and an in-process and post-mortem supervision system aimed at transforming government functions [4] (p. 60).

The negative list management system refers to the special mode, which means that anything that is not prohibited by Chinese laws can be carried out. In fact, such a rule is in line with international standards. Therefore, it is possible through the reduction of non-tariff barriers along with more opportunities for enterprises in terms of fair competition and free choice. It is noteworthy that the number of items included in the negative list is constantly decreasing. For example, in 2011 the negative list contained 190 items, while in 2013 it will contain 122 items. In addition, this negative list is uniform and binding within four pilot FTZs, such as Shanghai, Guangdong, Tianjin and Fujian. According to the philosophy behind the negative list, the whole range of foreign investment fields that are not explicitly specified and included in the negative list falls within the scope of the notification system. This solution ensures the existence of the principle of equal treatment of domestic and foreign capital. In other words, such equal treatment exists as an alternative to the authorisation system [4] (p. 60).

Secondly, the pilot FTZs ensure the existence of a loose financial framework system along with the supervision mode. Therefore, it is relaxed for overseas. Meanwhile, the strict management is

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completed at home. The success of FTZ is based on institutional innovation, such as the free trade account system. Accordingly, the free trade account is open to both foreign and domestic capital. However, it should be noted that each fund entering or leaving the free trade account is closely monitored by the regulator. Therefore, any inflow or outflow of funds is also facilitated, and the risks are under the necessary control [4] (pp. 60-61).

Thirdly, the so-called in-process and post-mortem supervision system framework exists within the pilot FTZs based on six systems. The above-mentioned systems refer to the safety inspection system, the antitrust inspection system, the social credit system, the system for publishing company annual reports, the system for registering operational abnormalities, the information exchange system, the law enforcement system and the participation of social forces in market supervision [4] (p. 61).

Fourthly, the FTZs are based on the trade facilitation system. To illustrate, the SHFTZ is based on the new customs supervision mode. This means that goods first enter the zone and then receive the customs declaration. Interestingly, this solution makes it possible to reduce the time it takes to clear goods through customs. In fact, it can take two/three days. In addition to this reduction in time, logistics costs could also be reduced by an average of 10%. Such a solution was first adopted in the SHFTZ and applied from 18 September 2014 [4] (p. 61).

Fifthly, the establishment of the FTZ brings changes in terms of improving the legal system. To start with, the "Arbitration Rules of the China (Shanghai) Pilot Free Trade Zone" were issued on 8 April 2014. Subsequently, the Shanghai No. 2 Intermediate People's Court issued "Several Opinions on Judicial Review and Execution of Arbitration Cases governed by the Arbitration Rules of the China (Shanghai) Pilot Free Trade Zone'. These two legal acts are related to each other to ensure judicial protection [4] (p. 61).

Finally, the FTZ also accelerates institutional reform by facilitating the development of the surrounding areas and introducing the necessary coordination. It could even be said that FTZs function as enclaves that try to overcome existing barriers, mostly institutional. For example, the SHFTZ focuses on the development of the Yangtze River Economic Zone [4] (p. 62).

Interestingly, each FTZ is different from the others, which can confuse foreign investors. On the one hand, each FTZ has its own reform priorities, and on the other hand, there are many different areas within China's FTZs. This means that they not only have different focuses, but also different development orientations and specific policies and business environments. Given the Chinese approach to "legal

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transplants" (discussed below), each of the FTZs represents such a testing ground for China's comprehensive open economic reform. As such, Chinese FTZs do not resemble FTZs in other countries around the world. In fact, they fulfil different functions because, in addition to being FTZs, they are also Special Economic Zones (SEZs) that focus on systematic and institutional innovations. These innovations involve reforming state-market relations [5] (p. 21).

It is also worth noting that each FTZ benefits from different geographical advantages and functional orientations. As a result, FTZs have different industry clusters and target investment groups. Although FTZs are established on the basis of bonded areas together with high-tech and new-tech zones, there are many pitfalls in their development. In fact, such development is rather unbalanced, not only because of the different dates of their establishment, but also because of their geographical locations. In addition, FTZs aim to resolve and smooth the relationship between the government and the market. This can be achieved through the opening-up policy. Therefore, driven by the expansion of the reform experiment, "anything the law does not authorize is not done, while all duties and functions assigned by law are performed" [5] (p. 21).

The status and actual situation of each FTZ are different. The original four FTZs are currently in a "period of lassitude" of reform. This situation is a result of the institutional innovations that have been made. In fact, the original four FTZs, namely Shanghai, Guangdong, Tianjin and Fujian, have already liberalised both trade and investment. In order to achieve these goals, they took advantage of their geographical location and strategic positioning [5] (p. 22).

It should be noted that the strategy of differentiation that exists within the pilot FTZs is causing much confusion among foreign investors. To illustrate, the differences concern reform priorities and areas of focus, development orientations, specific policies and business environments. Such a policy is based on the testing ground for the establishment of a fully inclusive and open economic system in China. This means that China's FTZs differ significantly from those of other countries in terms of their historical missions and the multiple functions they are expected to perform. In fact, Chinese FTZs are also special economic zones, which means that they also focus on both systematic and institutional innovation. In practice, this means reforming the relationship between the state and the market. The various FTZs in China enjoy a variety of advantages, including not only geographical locations but also functional orientations. They also encompass many industry clusters and target investment groups. Overall, it could even be said that China's FTZs are centred on bonded areas and high-tech and new-tech zones [5] (p. 21).

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3. IMPROVEMENTS IN DISPUTE RESOLUTION THROUGH THE FTZ: A GENERAL OVERVIEW

The innovative solutions were introduced in the pilot FTZs following the SPC's "Opinions on Providing Judicial Safeguards for the Construction of Pilot FTZs". The above-mentioned Opinions are widely seen as a more open attitude towards arbitration itself and thus the application of the Chinese Arbitration Law (CAL) within China's FTZs [14] (pp. 59-60).

To illustrate, due to important breakthroughs, the Chinese legislature decided to redefine foreign-related factors. Previously, if the parties to a dispute had no foreign-related factors, they could not submit their dispute to arbitration abroad. According to the SPC's "Choice of Law for Foreign-Related Civil Relationships", "where a civil relationship falls under any of the following circumstances, the people's court may declare it to be a foreign-related civil relationship: 1. where one or both parties are foreign citizens, foreign legal persons or other organisations, or stateless persons; 2. where the habitual residence of one or both parties is outside the territory of the People's Republic of China (PRC); 3. where the object of the relationship is outside the territory of the People's Republic of China; 4. where the legal act that gives rise to the establishment, amendment or termination of the civil relationship takes place outside the territory of the People's Republic of China; or 5. other circumstances under which the civil relationship may be determined to be a foreign-related civil relationship" [14] (pp. 59-60). Article 1). This means that parties to foreign-invested enterprises (aka FIEs) in the PRC have been recognised as Chinese legal partners. In practice, this means that they cannot opt for foreign arbitration as there are no foreign-related factors in their identity ([14], p. 60).

Nevertheless, the first breakthrough came in November 2015 alongside the Siemens International Trade (Shanghai) Co., Ltd. V. Shanghai Golden Landmark Co., Ltd. case. Accordingly, the Shanghai First Intermediate People's Court introduced a new interpretation of "foreign-related factors". Accordingly, "foreign-related factors" can be found in two situations: first, where both the plaintiff and the defendant are wholly foreign-owned enterprises (WFOEs) registered in China's FTZs; and second, where the performance characteristics of the contract include some foreign-related factors [14] (p. 60). Interestingly, notwithstanding the fact that China is a civil law country, which means that case law is not binding, the broad interpretation of "foreign-related factors" introduced by the Shanghai court was noted by the SPC and thus reflected in its FTZ Opinions. Thus, pursuant to Article 9(1) of the FTZ Opinions, where both parties are WFOEs registered in the FTZ, any dispute arising from such cooperation is deemed to be a commercial dispute involving foreign-related factors. Under such an approach, there is no need to confirm whether the contract performance characteristics include the so-called "foreign-related factors". Although

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such a solution is innovative, it should be emphasised that it only applies to WFOEs. At the same time, it is not available to joint ventures or cooperative enterprises [14] (p. 61).

Second, although ad hoc arbitration cannot be applied under the CAL (Articles 16 and 18), there are different rules for FTZs. Article 9(3) of the FTZ Opinions provides that ad hoc arbitration can be conducted if certain conditions are met, such as "If two enterprises registered in the FTZ agree that relevant disputes shall be submitted to arbitration in a specific place in mainland China, according to specific arbitration rules or by specific personnel, the arbitration agreement may be deemed valid. If the people's court finds that the arbitration agreement is invalid, it shall request the higher court to review it. If the higher-level court agrees with the opinion of the lower-level court, the lower-level court shall report its opinion on the review to the Supreme People's Court on a level-by-level basis and make a decision after receiving the Supreme People's Court's reply" [14] (p. 62). In short, one could even say that the ad hoc arbitration agreement is valid if two parties are registered within the FTZs and the arbitration agreement meets the "three specific conditions", i.e. a specific place in mainland China, arbitration rules and arbitrators. While this solution may seem interesting, the People's Court still has discretion to determine the validity of an arbitration agreement. Given the binding provisions, "the arbitration agreement may be determined to be valid". The word "may" emphasises this possibility. In fact, in the case of an invalid ad hoc arbitration agreement, the prior notification mechanism applies. This means that the higher people's court is competent to review the case before making a final decision. Tao and Zhong emphasize that such a solution is aimed at ensuring consistency in the interpretation of the local people's courts on the validity of ad hoc arbitration agreements [14] (pp. 62-63).

Following the SPC Opinions, the Hengqin Free Trade Zone introduced the first "Ad Hoc Arbitration Rules", which took effect on 23 March 2017. It is widely regarded as a cornerstone in the development of ad hoc arbitration in mainland China. Although it is only a first step, it should be viewed positively. In fact, there are still many challenges and issues that need to be addressed, such as the correct understanding of the "three specific conditions". In addition, there is no consensus on whether these three conditions should be fulfilled simultaneously or not. The relationship between the CAL and the ad hoc regime remains unclear [14] (p. 63).

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4. SHANGHAI FREE TRADE ZONE AS A TRAILBLAZER IN RESOLVING SINO-FOREIGN DISPUTES

The Shanghai Pilot Free Trade Zone (SHFTZ) was established on September 29, 2013, as the first FTZ in mainland China. This decision was made in order to comply with international practices. According to its development programme, the SHFTZ would achieve its goals through the adoption of agile and efficient customs supervision measures. Therefore, it promotes both trade facilities and freedom. The latter refers, among others, to the liberalised border line, the recording system, and the supervision of the status classification of goods. Based on these facilities, it was possible to build the Shanghai International Trade Centre by attracting more foreign partners and investments [13] (pp. 323-324).

It is also worth noting that the SHFTZ was launched as a new round of reform in mainland China. The SHFTZ not only aims to create an international market-oriented environment, but also a law-based environment, and improve the rule of law within its jurisdiction. Interestingly, the SHFTZ should be recognised as a guide for other FTZs in China in terms of practices and experiences to be successful. This means that the other FTZs should replicate the solutions adopted in the SHFTZ. To illustrate, the Guangdong FTZ has even been responsible for following practices and rules that originated in Hong Kong. Such a trend was set in motion after the transplantation of Hong Kong law into Chinese domestic law in the 1980s [7] (pp. 341-342). One could even say that this approach reflects the so-called "legal transplants" that are very popular in China. "Legal transplants" refer to legal models that are transferred from an exporting legal system to a receiving jurisdiction. All in all, given the broad perspective, reception, transplants or borrowings can have two results. On the one hand, they can refer to the process. On the other hand, they can refer to the results of a legal reform project. In such a case, legal changes are based on the imitation of laws, some doctrines or even theories, among others [1] (p. 1).

Following the Chinese example, "legal transplants" were introduced in the name of modernisation. It should be emphasised, however, that any legal transplant also operates within a specific "local condition". This means that the unique political, social, economic and cultural background and context are involved. In practice, legal transplantation could be summarised as a process of trial and error. Historically, China benefited from such "legal transplants" in the course of the 20th century, which is widely known as a period of "revolutions" and radical changes in terms of Chinese ideology. As such, each process of legal transplantation of foreign laws, institutions and ideas was rather controversial in terms of clear direction [2] (p. 91).

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Overall, the SHFTZ is widely regarded as a milestone for doing business in China. Many foreign investors have chosen to develop their businesses within this special zone. However, it is worth noting that the SHFTZ is not only important for international partners but also for the Chinese government. Interestingly, the Chinese government is using the SHFTZ to achieve long-term goals, including better promotion of China in terms of service-oriented economy, internationalisation of the RMB, competitive tax rates, simplified cross-border capital flows, promotion of Shanghai as an international centre for trade, finance, shipping and logistics, expansion of FTZs across mainland China, etc [10] (p. 117).

5. ARBITRATION MECHANISMS AS A METHOD OF DISPUTE RESOLUTION WITHIN THE SHANGHAI FTZ

At the outset, it should be noted that arbitration is considered to be the preferred method of resolving commercial disputes. It offers many advantages over traditional litigation, such as neutrality, flexibility, efficiency, confidentiality, among others. Therefore, given these characteristics, arbitration is perfectly suited to the actual situation of disputes arising within the FTZs. In addition, there is a need to establish a fully pluralistic dispute resolution mechanism. Nevertheless, according to the current situation in China, there are still many restrictions on the direct application of international commercial arbitration mechanisms within the Chinese FTZs. It could even be said that the binding provisions of the Chinese Arbitration Law (CAL) are not in line with the existing economic development of the FTZ. Importantly, the commercial activities conducted in the FTZs are significantly different from other arbitration cases, so the FTZs also require their own arbitration mechanism for dispute resolution [14] (p. 610).

To illustrate, once the SHFTZ was established, it functioned without special laws and administrative regulations. At the outset, the SHFTZ was established on the basis of normative documents governing the "management system, investment opening, trade facilitation, financial services, tax administration, comprehensive supervision and rule of law environment". In addition, the State Council departments, together with the Shanghai Municipal Government and its General Office, have issued documents on the operation of the FTZ. Regarding the dispute resolution mechanism, the SHFTZ established the so-called Shanghai Pilot Free Trade Zone International Arbitration Centre (also known as the Shanghai Pilot Free Trade Zone Arbitration Court) on October 22, 2013, based on the Shanghai Pilot Free Trade Zone Arbitration Rules. It is worth noting that these rules are largely based on international arbitration rules. The SHFTZ Rules were promulgated on April 8, 2014, and entered into force on May 1, 2014.

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Following the adoption of the SHFTZ Arbitration Rules, the Shanghai No. 2 Intermediate People's Court, which is responsible for the review of arbitration cases by SHIAC, issued the "Opinions on Judicial Review and Enforcement of Arbitration Cases Applying to the China (Shanghai) Pilot Free Trade Zone Arbitration Rules". These Opinions are widely regarded as providing important judicial support for the implementation of the SHFTZ Arbitration Rules. It could even be said that the tripartite SHFTZ arbitration mechanism, including an arbitration institution itself operating within the SHFTZ, the arbitration rules and the opinions on judicial review, began to exist in the SHFTZ [17] (pp. 274-275).

The SHFTZ Rules contain some innovations compared to the CAL. According to these rules, if the parties have agreed to submit their disputes to the SHIAC and have handled their case, the said rules will apply to the parties, the material issues or the subject matter of the dispute, or "if the parties have agreed to submit their disputes to the FTZ Arbitration Court or have submitted their disputes to the SHIAC to be handled by the FTZ Arbitration Court, unless the parties have agreed otherwise" [17] (pp. 274-275).

By way of illustration, unlike the CIETAC Rules 2015 and the SHIAC Rules 2015, which refer to interim measures, the SHFTZ Arbitration Rules provide separately for interim measures and indicate that they may be used to protect property or evidence from being transferred or damaged: "a) property preservation measures; (b) evidence preservation measures; and (c) measures requiring a party to perform certain acts or prohibiting a party from performing certain acts; (d) pre-arbitration interim measures; (e) emergency arbitrator procedures; and (f) procedures for modification of interim measures" [17] (pp. 277). However, it should be stressed that the parties still rely on the support of the local people's courts when applying for interim measures. This also applies to the enforcement phase. In addition, the SHFTZ Arbitration Rules contain specific provisions on time limits. According to these rules, "if a party applies for a preservation order before or during the arbitral proceedings, such application shall be accepted immediately", and "in urgent cases, if the relevant requirements stipulated by law are met, a decision shall be made within 24 hours and then transferred for enforcement immediately" [17] (p. 278).

Another innovation, which is certainly worth highlighting, relates to emergency procedures. According to the SHFTZ Arbitration Rules, a party may decide to request interim relief from a provisional arbitrator. Such a possibility is available in the period between the acceptance of a case and the constitution of the arbitral tribunal. Thus, the SHFTZ Arbitration Rules provide that a provisional arbitrator may issue an urgent decision within 20 days of his appointment. Similarly, the arbitral tribunal could issue such a decision within the same period after receiving the request for interim measures. Overall, it could even be said that the SHFTZ Arbitration Rules provide for convenient time limits both for the appointment of the

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interim arbitrator and for the issuance of the decision. Therefore, the parties can obtain the said interim relief in a relatively short period of time [17] (p. 277).

Thirdly, the SHFTZ Arbitration Rules are relatively innovative with regard to the appointment of open-listed arbitrators. Indeed, there is a dual mechanism model, which means that the parties "may either appoint arbitrators from the panel of arbitrators or recommend persons from outside the panel of arbitrators as arbitrators". The parties "may also agree on the joint recommendation of a person from outside the arbitral tribunal as president/sole arbitrator" (Art. 27 SHFTZ). In addition, Article 9 of the Judicial Review of Arbitrators Appointed Outside the Arbitral Tribunal provides that "[i]f one or more of the parties recommends/jointly recommends arbitrators or the presiding (sole) arbitrator from outside the Arbitral Tribunal, it shall be recognised in the judicial review, if the appointment has been confirmed by the Chairman of the SHIAC, the appointed persons meet the qualification criteria set forth in Article 13 of the PRC Arbitration Law, and the appointment procedure is lawful under the SPFTZ Arbitration Rules and relevant provisions of Chinese laws" [17] (p. 278). These rules give the parties greater freedom to nominate and select arbitrators outside the panel.

Finally, the SHFTZ Arbitration Rules also contain some provisions regarding an award ex aequo et bono. These provide that "if the parties have so agreed in the arbitration agreement or have made a written request in the course of the arbitration proceedings, the arbitral tribunal may make an award ex aequo et bono, provided that such an award does not contravene mandatory provisions of law and public policy" (Article 56). In addition, under Article 13 of the Opinions, "where the arbitral tribunal makes an award ex aequo et bono, the procedure may be recognised in judicial review, provided that the procedure is jointly agreed by the parties in writing, does not violate any mandatory provisions of Chinese laws and the award made in the procedure is in accordance with the SHFTZ Arbitration Rules" [17] (pp. 278-279).

Overall, it could even be said that the solutions adopted in the SHFTZ reflect practices widely used in major international arbitration institutions worldwide. Notwithstanding these innovations at work in the SHFTZ, there are still some practical issues that need to be addressed. To illustrate, there is a potential conflict between the SHFTZ Arbitration Rules and the CAL. One example is the recognition of the implied arbitration agreement under the SHFTZ, which is not widely permitted under the CAL. Moreover, there are no supporting measures for the implementation of such introduced innovative solutions in civil proceedings. This situation applies, for example, to interim measures. According to the SHFTZ Arbitration Rules, the arbitral tribunal is competent to decide on interim measures, while the civil procedure grants such power to the local people's courts. In practice, such ambiguity leads to a situation where either the

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arbitral tribunal or the civil court can decide on the interim measures. As a result of this uncertainty, there are still many practical doubts as to whether such a decision could be enforced in the PRC [17] (p. 279).

Another interesting solution has recently been adopted within the SHFTZ. The State Council of the PRC issued the "Framework Plan for the New Lingang Area of the China (Shanghai) Pilot Free Trade Zone" (中国（上海）自由贸易试验区临港新片区总体方案) on August 6, 2019. According to Article 4 of the Framework Plan, it is allowed for reputable foreign arbitration and even dispute resolution institutions to register with the Shanghai Municipal Bureau of Justice and the so-called judicial administrative authority of the State Council. After fulfilling these requirements, they can set up a business in the New Lingang Area of the SHFTZ. Under this solution, such registered foreign institutions can handle civil and commercial disputes arising not only from international trade, but also from maritime affairs and investment. Interestingly, the above-mentioned institutions could also issue rules for the purpose of granting interim measures to both PRC and foreign parties. This solution aims to support the entire dispute resolution process, including the preservation of assets and evidence. Prior to the enactment of this Framework Plan, foreign arbitral institutions could decide to set up their representative offices since 2015. At present, the following representative offices exist within the SHFTZ: the Hong Kong International Arbitration Centre (HKIAC), the Court of Arbitration of the International Chamber of Commerce (ICC), the Singapore International Arbitration Centre (SIAC) and the Korean Commercial Arbitration Board (KCAB). While such a solution seems interesting, there are some uncertainties regarding the status of the awards. For example, the question arises as to whether an award would be domestic or non-domestic. Indeed, such a distinction has practical significance in terms of the setting aside and enforcement of awards [11].

According to the above plan, the SPC also issued the "Opinions on Providing Judicial Services and Safeguards for the Construction of the Lingang Special Zone of China (Shanghai) Pilot Free Trade Zone by People's" (关于人民法院为中国（上海）自由贸易试验区临港新片区建设提供司法服务和保障的意见) on December 27, 2019. Following these opinions of the SPC, the Shanghai High People's Court also issued the so-called "Implementation Opinions on Providing Judicial Services and Safeguards for the Construction of the Lingang Special Area of China (Shanghai) Pilot Free Trade Zone by Shanghai Courts" (上海法院服务保障中国（上海）自由贸易试验区临港新片区建设的实施意见). In fact, the two opinions pave the way for the development of a different approach to dispute resolution compared to other local people's courts in China. Thus, the Shanghai Courts will also provide a one-stop dispute resolution platform based on the cooperation of international commercial mediation and arbitration institutions. Thus, they could provide a complex service that includes not only mediation and arbitration, but also

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litigation. This solution is similar to the practice of the China International Commercial Court (CICC) [8]. It is noteworthy, however, that the other local courts have not yet experimented with such innovations thus far [3].

6. DISPUTE RESOLUTION MECHANISMS IN THE GUANGDONG AND CHONGQING FTZS

Another example is the second set of FTZs operating in China, the Guangdong Pilot Free Trade Zone (GFTZ). Interestingly, in this case, the GFTZ is linked to the Shenzhen International Arbitration Institute (SIAI). It is noteworthy that this institution has adopted a special management model, which is significant in terms of the independence of the arbitral institution and the arbitral tribunal itself. For example, the SIAI introduced the so-called Board of Directors, which is crucial in terms of changing the status quo of Chinese arbitration institutions [14] (p. 612).

The Municipal Committee approved the SIAI on July 20, 2021. This allowed the SIAI to establish the "Guangdong-Hong Kong-Macau Greater Bay Area (GBA) International Arbitration Centre". Indeed, the said Centre will provide better opportunities for exchanges and cooperation among arbitration and mediation institutions operating in the Guangdong-Hong Kong-Macau GBA [12]. (SCIA, 2021).

Finally, the SIAI has also broadened the scope of its jurisdiction. Therefore, it can also handle investment disputes involving a country and foreign investors. The newly amended Arbitration Rules ensure that the SIAI can also apply the UNCITRAL Arbitration Rules in handling this type of dispute. However, despite the efforts to attract more foreign parties, there are still many challenges, mainly related to the insufficient number of professional arbitrators and the lack of global reputation [16].

The Chongqing FTZ (CFTZ) took a different approach to dispute resolution. The Liangjiang New Area (Pilot Free Trade Zone) Court has established a special mechanism widely known as "one-stop international commercial dispute resolution". In fact, there is also a Chongqing One-Stop Diversified International Commercial Dispute Resolution Centre, which provides services based on the combination of litigation, arbitration and mediation. In practice, this mechanism benefits from diversity, efficiency and convenience. Therefore, it is considered a competitive component to improve the legal environment in the CFTZ [18].

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7. SHIFT TOWARDS UNIFORM LEGISLATION ON DISPUTE RESOLUTION IN FTZS

At present, there are many pitfalls regarding the dispute resolution mechanism within China's FTZs. Some FTZs have not even established arbitration institutions (e.g., Hubei Liaoning). Notwithstanding the increasing number of enterprises within the FTZs and thus the increasing number of commercial disputes, there is a need to establish professional arbitration institutions. This would ensure the relatively quick resolution of disputes. In order to achieve this goal and attract more foreign parties to settle their disputes in China's FTZs, it is necessary to unify the legislation on dispute resolution mechanisms [14] (p. 613).

Firstly, the Chinese legislature does not provide for a single set of rules governing arbitration in FTZs at the national level. Indeed, there are no similar solutions in the United States or Singapore. Therefore, the rule of "law first, zone later" does not apply in the case of the PRC. This means that there is no law applicable to the full range of Chinese pilot FTZs. In addition, the binding provisions of the Chinese Arbitration Law (CAL) are not fully in line with international standards and practices, particularly with respect to the ad hoc and emergency arbitration systems [14] (p. 613).

Secondly, the FTZs are based on the General Scheme, which could be defined as a regulatory document for the construction of each FTZ. This General Scheme includes the following issues: financial reform, tax regulation, transformation of government functions, and rule of law construction. One could say that there is nothing wrong with such content, but there are too many pitfalls regarding the level of formality and weak operability of this document. In view of the adoption of this system, the Ministry of Commerce, together with local governments, prepared the content of such a document, which was then approved by the State Council. However, there are discrepancies between the subject of the formulation and the subject of the approval. As a result, there are many controversies regarding the status of the General Scheme itself and some restrictions related to its application [14] (p. 613).

Thirdly, there is too much legislation at the national level, which is relatively difficult for foreign parties to follow. To illustrate, apart from the General Scheme, which is the basis for each FTZ, there are some normative documents, such as the Management Measures for Pilot Free Trade Zones and the Regulations for Pilot Free Trade Zones. The former are generally issued by the local governments for the purpose of day-to-day management, while the latter are issued by the local people's congresses. As a result, the legal norms for FTZs mostly refer to local legislation [14] (p. 613).

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Given the obstacles to Chinese dispute resolution mechanisms in FTZs, it is worth outlining possible solutions that could be adopted there. Firstly, it seems necessary to broaden the scope of admissibility of arbitration agreements, in particular with regard to "written form". Secondly, it seems necessary to adopt less strict requirements about the substantive elements of the arbitration clause/agreement itself. Such a relaxation should, for example, relate to the possibility of non-direct invalidity of an arbitration agreement. Under such a solution, in the case of a will to arbitrate and litigate, the method of dispute resolution would be based on the choice of the party who first initiated the proceedings (arbitration or litigation). Finally, if there is no clear choice of an arbitral institution to handle a dispute, the arbitration agreement should not be invalid in such a case. In fact, the number of arbitration institutions in China is increasing, and legislation cannot easily keep up with the constant changes. Therefore, one could refer to the recommendation to infer the appropriate arbitration institution from the content of the parties' dispute and the nature of the contract itself [14] (p. 614).

8. CONCLUSIONS

Although China uses legal transplants, including dispute resolution mechanisms, there are still many differences with international standards. The FTZs seem to pave the way for the introduction of new standards and the start of arbitration reform. However, the main problem is the lack of unified legislation for dispute resolution of Sino-foreign cases within the FTZs. In fact, there is no uniform legislation at the national level. As a result, each FTZ in China has its own rules and regulations on dispute resolution. Some of them have even decided to set up "one-stop-shop" platforms like the CICC (e.g., Chongqing FTZ). While all these solutions are innovative compared to the Chinese Arbitration Law (for example, in terms of interim measures, ad hoc arbitration or emergency arbitrators, etc.), there is still a need to unify these solutions to make them more comprehensive for foreign parties.

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ABOUT THE AUTHOR

Magdalena Łągiewska – Department of Public International Law, University of Gdańsk, Gdańsk, Poland
e-mail: magdalena.lagiewska@ug.edu.pl
ORCID ID: https://orcid.org/0000-0001-9482-2651
Scopus ID: https://www.scopus.com/authid/detail.uri?authorId=57217986445

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SOLUCIÓN DE DISPUTAS SINOESTRATEGICAS EN LAS ZONAS DE FRANCO COMERCIO DE CHINA

RESUMEN

China está realizando importantes esfuerzos para cumplir con los estándares internacionales en materia de resolución de disputas. El país ha establecido los Tribunales Comerciales Internacionales de China (CCPI) en Shenzhen y Xi'an, mientras que las Zonas de Libre Comercio (ZLC) piloto están desarrollando sus propios mecanismos para la resolución de disputas comerciales internacionales. Este artículo examina los recientes avances y las soluciones implementadas en diversas ZLC de China. El análisis concluye que China está empleando la transposición legal y revisando diversas soluciones para resolver disputas dentro de las ZLC. Por lo tanto, las ZLC están facilitando la reforma de la resolución de disputas en China. Sin embargo, actualmente no existe una legislación nacional uniforme para las disputas sino-extranjeras que se gestionan en las ZLC. En su lugar, cada ZLC adopta sus propias normas de resolución de disputas, incluyendo instituciones de arbitraje especializadas y plataformas de "ventanilla única". Para alentar a más partes a resolver sus disputas sino-extranjeras en las ZLC, se requiere un enfoque y un conjunto de regulaciones unificados.

Palabras clave: China, resolución de disputas, zonas de libre comercio, arbitraje

中国自贸区中外纠纷解决机制

摘要

中国正大力推进争端解决机制与国际标准的接轨。中国已在深圳和西安设立了中国国际商事法院，同时，各自贸区也在构建各自的国际商事纠纷解决机制。本文考察了中国各自贸区近期在争端解决方面取得的进展和已实施的解决方案。分析表明，中国正在借鉴和借鉴自贸区内的各种纠纷解决方式。因此，自贸区正在推动中国争端解决机制的改革。然而，目前尚无统一的国家层面立法规范自贸区内中外纠纷的解决。各自贸区各自制定了不同的纠纷解决规则，包括设立专门的仲裁机构和“一站式”平台。为了鼓励更多当事方在自贸区内解决中外纠纷，亟需一套统一的规则和方法。

关键词：中国、争端解决、自由贸易区、仲裁

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