

LEGAL STANDARDS GOVERNING MARKET ACCESS IN THE GREATER BAY AREA AND ITS RENEWED SIGNIFICANCE FOR THE ECONOMIC REVIVAL FROM THE PANDEMIC OUTBREAK

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ABSTRACT

By virtue of the renowned one country two systems principle, China (the PRC) has bestowed upon its two special administrative regions (SARs) various economic freedoms in international relations and privileged access to its domestic markets. In addition to the continued expansion of the trade and investment liberalisation in various market segments with the two SARs individually, the PRC has also sought a robust economic integration between the three markets through the recent Greater Bay Area (GBA) plan. Since the onset of the Covid-19 pandemic related economic woes facing the SARs, questions and problems concerning the effective means of economic revival have continued to rise. In such circumstances, the present paper aims to identify the relevance and assess the utility of crucial legal standards governing the market access between the PRC and the SARs. The paper argues that the gradual expansion of the bilateral obligations governing the trade and investment liberalisation between the PRC and the SARs is matured enough to provide a stable legal environment that is congenial for promoting an economic revival from the Covid-19 pandemic. To assess the vibrancy and the versatility of the related legal obligations, the paper systematically examines critical legal and regulatory standards governing free trade and investment between the PRC and Hong Kong since the handover and assesses some of its potentials in promoting an economic revival. The paper then introduces the GBA economic integration plan and highlights some of the key features of its legal framework that has the potential to provide further impetus to the economic revival. The paper concludes that the economic privileges gained through various bilateral and trilateral pacts made with the PRC and between the three jurisdictions leave the two SARs very well positioned to combat the pandemic related economic disruptions quickly and effectively. The paper makes a contribution in assessing the essential role of legal facilitation in achieving economic liberalisation and cooperation between the three markets and calls upon the need to take advantage of the fruits of such cooperation to effectively combat the economic threats emanating from the pandemic.

Keywords: Free trade agreements, economic integration, legal obligations, pandemic impact, economic revival.

INTRODUCTION

Hong Kong and Macau are special administrative regions (SARs) of the People's Republic of China (the PRC) established under the 'One Country Two Systems' principle. By virtue of the principle, the PRC has provided greater autonomy to the two SARs in international economic relations and has granted privileged access to its domestic markets through a series of trade and investment liberalisation pacts since the successful establishment of the two SARs. Moreover, in furtherance of the developmental blueprint of the PRC, the area consisting of Guangdong province, Hong Kong and Macau SARs, referred to as the Greater Bay Area (GBA), was declared as an integral part of the key strategic planning. The GBA vision is enshrined in two key instruments, namely the Framework Agreement on the development of the GBA (hereafter referred to as the GBA-Framework Agreement) signed in 2017 and the Outline Development Plan for the Greater Bay Area (hereafter referred to as GBA-ODP) promulgated in 2019. Since the onset of the Covid-19 pandemic related economic woes facing the SARs, effective means of economic revival have gained importance. In such circumstances, the present paper aims to identify the relevance and assess the utility of crucial legal standards governing the market access between the PRC and the SARs. The paper argues that the gradual expansion of the bilateral obligations governing the trade and investment liberalisation between the PRC and the SARs is matured enough to provide a stable legal environment that is congenial for promoting an economic revival from the Covid-19 pandemic.

First, the paper systematically examines the fundamental legal obligations arising in the liberalisation of trade and investment and other economic and technical cooperation measures agreed between the PRC and Hong Kong to highlight the significance of the related norms for an economic revival. As there is a considerable similarity in the pattern and characteristics of the bilateral trade and investment liberalisation regimes established by PRC with Hong Kong and PRC with Macau, the paper will closely examine the PRC-Hong Kong bilateral regime as the essential reference. Although some relevant differences and their implications arising from PRC-Macau's bilateral trade and investment regimes could be pointed out, for the purposes of the ongoing discussion the paper will primarily focus on relevant PRC-Hong Kong bilateral obligations. The paper then introduces the GBA economic integration plan and highlights some of the key features of its legal framework that has the potential to provide further impetus to the economic revival. The paper concludes that the economic privileges gained through various bilateral and trilateral pacts concluded with the PRC and between the three jurisdictions make the two SARs very well positioned to combat the pandemic related economic disruptions quickly and effectively.

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LEGAL STANDARDS GOVERNING GOODS AND SERVICES TRADE AND INVESTMENT FACILITATION BETWEEN THE PRC AND HONG KONG

After Hong Kong was established as a SAR of the PRC in 1997, the PRC has signed many bilateral agreements that manifest the recognition of the autonomous status of Hong Kong. Such agreements were established in various fields, including the frontiers of legal and judicial cooperation and mutual recognition and enforcement of arbitral awards. The agreements concluded in the frontiers of economic cooperation between the two jurisdictions are of particular importance to the focus of this present paper. In particular, the critical economic agreements in trade and investment liberalisation need to be closely analysed to highlight their significance in facilitating an economic revival from the impact of the pandemic. The PRC and HKSAR (herein referred to as the 'two sides' or 'two markets') signed the Closer Economic Partnership Arrangement 2003 (herein referred to as CEPA-HK 2003 or the 2003 Arrangement), with a set of aims that included the promotion of bilateral prosperity and development of the two markets as well as the facilitation of enhancing economic links between themselves as well as with third countries and regions (herein referred to as the 'external dimension'). Often the CEPA-HK 2003 is only seen as an instrument seeking to liberalise trade between the two markets, and the aim to enhance economic links with other countries and regions does not receive much attention. However, such an aim should gain added significance because it is an integral part of the preambular proclamation of the CEPA-HK 2003, which should serve as one of the key standards of interpretation of any legal provisions and obligations in the 2003 Arrangement.

In addition, it is also arguable that such an added significance to the external dimension in the CEPA-HK 2003 is crucial for various other landmark economic initiatives involving the PRC. These include the belt and road initiative, Greater Bay Area Cooperation, and the traditional role played by HKSAR as a gateway for promoting trade and financial services between the PRC and the rest of the world. Although the aims enshrined in the preamble of the CEPA-HK 2003 are much broader, the specific objectives of the 2003 Arrangement are apparently focused only on bilateral goals. With the objectives of promoting joint development and strengthening cooperation between the two markets in the fields of trade and investment, the CEPA-HK 2003 strives for progressive reduction or elimination of tariffs and non-tariff barriers in goods trade, progressive liberalisation of services trade by reducing and eliminating discriminatory measures and promotion of facilitation in trade and investments. Despite the narrower objectives that seem to be focused on bilateral liberalisation, it is undeniable that those objectives should also be interpreted in the light of the broader aims enshrined in the preamble. Therefore, it is plausible to argue that the objective to promote liberalisation in bilateral trade in goods and services and investments should be broadly construed as a goal that should also ultimately serve the external dimension.

The finding principles of CEPA-HK 2003 incorporates an essential set of values, which should serve as the key reference in the implementation and the evolution of the 2003 Arrangement since its inception. Firstly, given the unique position of the parties to this bilateral Arrangement that does not involve the typical two distinct state parties, the principle of one country two systems is the first and foremost principle of relevance for any interpretation or modification of the provisions of the CEPA-HK 2003. Secondly, being a regional trade agreement, it is essential to ensure that its implementation and evolution are compatible with the WTO obligations of both sides. Next, the importance of seeking the implementation and evolution of the 2003 Arrangement in harmony with the needs of the industries and enterprises of the two sides and securing a steady and sustained development is crucial. Although the 2003 Arrangement is mainly seen as a special concession afforded to Hong Kong by the motherland, the values of reciprocity and mutual benefits should still dictate their trade relationship under the Arrangement.

Moreover, the Arrangement should serve to complement the advantages of the respective sides and at the same time promote the joint prosperity of both sides. Finally, the principle of progressive action that calls for a priority in taking actions or resolving issues relating to easier subjects under the Arrangement before addressing more complex ones is a significant pragmatic vision in the implementation and the evolution of this vital pact. In addition, the Arrangement also explicitly contemplates the broadening of its scope and enriching its provisions through continuous future liberalisation. This vision has been categorically materialised as the bilateral liberalisation between the two sides has expanded substantially since the 2003 Arrangement.

Interestingly, both sides have realised that despite the 2003 bilateral Arrangement, the WTO multilateral obligations will continue to govern their trade relationship. Therefore, they have voluntarily undertaken to limit the application of certain WTO obligations of the PRC to their bilateral trade relations. They mainly pertain to those additional obligations PRC has undertaken in its Protocol acceding to the WTO in response to the non-market economy status conferred upon the PRC.² The apparent abdication of the relevant obligations under the CEPA-HK 2003 is more of a symbolic gesture reinforcing the argument that the continuous reforms in the PRC have transformed its economy to become market-oriented than of a practical necessity as the possibility of Hong Kong seeking to meet out a non-market economy treatment to the PRC under the WTO obligations is non-existent.

About the substantive provisions, the CEPA-HK 2003 could be categorised into three distinct sectors of trade in goods, trade in services and provisions governing foreign investments. The obligations arising in all the three sectors are distinctly formulated to be progressive in nature, and the Arrangement was not designed to achieve full liberalisation in a single undertaking. This is evident from the very outset, as the tariff commitments in the goods sector, particularly for the goods exported from Hong Kong to the PRC, were designed to reduce progressively.³ The CEPA-HK 2003 obliged PRC to initially provide zero-tariff only to the set of

² See the Protocol on the Accession of the People's Republic of China to the WTO 2001, Articles 15, and Article 16. In addition, specific provisions of the Working Party Report on the Chinese Accession are also not applicable to the bilateral trade relations between the PRC and Hong Kong. See the Report of the Working Party on the Accession of China, para 242.

³ However, about the PRC exports to Hong Kong, the relevant obligation reinforces the existing free-market characteristic of Hong Kong, obliging the continuation of the zero-tariff application to all the goods exported from the PRC. See Article 5, para.1, CEPA-HK 2003.

prescribed goods originating from Hong Kong. However, the zero-tariff treatment to the goods of Hong Kong origin outside the initially prescribed list within the next two years was contemplated. Under this provision, the zero-tariff treatment of the goods of Hong Kong origin has continued to expand almost every year since 2003. The 2003 list of goods of Hong Kong origin entitled for zero-tariff that contained 273 distinct products were supplemented with a separate schedule that prescribed the origin criteria for each of the 273 products, which should be satisfied in order to avail the tariff preference⁴. In the prohibition of non-tariff barriers (NTBs) in CEPA-HK 2003, reference is also made to the relevant WTO rules, again showing the cohesive nature of this bilateral Arrangement with the existing multilateral obligations of both sides. Like the one-sided nature of the tariff elimination obligations discussed above, the Arrangement only prohibits the PRC from imposing tariff quota for the Hong Kong originating goods. No reference to a similar obligation upon Hong Kong is present. However, regarding one of the essential features of the CEPA-HK 2003, namely the prohibition of anti-dumping measures, both sides are equally imposed with the obligation.

Regarding subsidies, the Arrangement emphasises the need to observe the relevant multilateral rules again with reference to the relevant WTO Agreement and the provision of the GATT. In addition, as in the case of anti-dumping, both sides have undertaken the obligation under the Arrangement not to impose countervailing measures against each other. It should be of interest to note that the 2003 Arrangement, although only listed the goods of Hong Kong origin that will enjoy the zero-tariff in the PRC, conferred the right to impose safeguard measures upon both the parties. Whenever there is a sharp increase in the import of any Annex 1 listed goods from the other side, and it causes or threatens serious injury to the relevant domestic industry of the importing side, the Arrangement recognises the right to suspend the concessions enjoyed by the relevant goods, albeit as a temporary measure subjected to written notice and commencement of consultation upon request. Finally, the liberalisation benefits in trade in goods are subjected to general rules of origin requirements and specific origin criteria for each good that was discussed earlier.⁵ In addition, both sides must establish procedures for issuing the certificate of origin and strictly implement them. The implementation is further strengthened by mandating both sides to establish necessary auditing and regulatory mechanisms and develop computer links and electronic data interchange (EDI) between their relevant authorities.

In the services sector, CEPA-HK 2003 contemplated enhanced market access through progressive reduction or elimination of related restrictions based on a specific scheme of liberalisation set out in a distinct annex⁶. Under the Scheme, liberalisation commitments on behalf of the PRC in specific service sectors for the services originating from Hong Kong were made. However, the parallel commitments on behalf of Hong Kong for services originating from the PRC (and for obtaining a professional qualification in Hong Kong) were left open for future formulation and implementation through mutual consultation. This indicates that the liberalisation efforts for the Hong Kong services market for the services of PRC origin were perceived to be more challenging as it was left for the future, warranting consultation between the two sides. An interesting obligation was imposed on Hong Kong not to introduce new discriminatory measures on services originating from the PRC in those service sectors upon which PRC has undertaken obligations under the Scheme. The liberalisation commitments of the PRC under the Scheme were subjected to laws and regulations, including the administrative regulations of the PRC, providing a preponderance to the domestic law that was beyond the Arrangement itself. The Scheme also has an inbuilt mechanism requiring consultation by both sides to address any substantial impact arising from the implementation of the relevant obligations. Finally, it also foresees the possibility of applying the relevant multilateral obligations of the PRC arising from its Protocol of Accession to the WTO to those services sectors or measures not covered under the Scheme.

To be entitled to receive preferential treatment in the services sector, any natural or juridical person from two sides should satisfy the definition of service suppliers and a set of requirements relating to the business operations as prescribed. Although a standard definition of service suppliers is provided for both sides, the specific set of business operation requirements are only prescribed for the service suppliers from Hong Kong seeking to access the services market in the PRC. Like the situation relating to the specific market access commitments discussed earlier, the prescription of the specific set of business operation requirements for the service suppliers from the PRC seeking to access the Hong Kong market is left for future determination by the two sides through consultation. Such a void reinforces the apprehension that the liberalisation of the Hong Kong services market for the services of PRC origin has been more challenging and uncertain than the liberalisation of the PRC services market for Hong Kong service suppliers. Finally, it is essential to note that the privileged market access under the CEPA-HK 2003 is not limited to the native service suppliers of both sides. However, it is also extended to the service suppliers of other WTO members that are established as juridical persons under the laws of either side.⁷ However, such entities should satisfy the definition of service suppliers and be engaged in substantive business operations as prescribed.

In addition to the general provisions governing trade in services, the CEPA-HK 2003 strives to strengthen cooperation between the two sides on two specific service sectors: financial services and tourism services. Apart from information sharing and enhancing cooperation between financial regulators of both sides, much of the measures relating to the financial services promote the PRC financial entities to enhance their relationship with the Hong Kong counterparts rather than the other way around. This imbalance is understandable given the dominant position of Hong Kong as an international financial centre. However, what is interesting to note is the specific support extended to the state-owned and join-equity commercial banks in the PRC, even to relocate certain operations to Hong Kong. This provision could be seen as an extraordinary measure to tap into the location-based advantage offered

⁴ See Table 1, Annex 2, CEPA-HK 2003.

⁵ For the general rules of origin of the CEPA-HK 2003 are set out in a separate annex to the Arrangements. See CEPA-HK 2003, Annex 2.

⁶ See Annex 4 of CEPA-HK, 2003.

⁷ For example, such service suppliers, by virtue of being established in Hong Kong SAR and subject to the satisfaction of the requirements of the qualification of being a Hong Kong supplier, are bound to benefit more in terms of market access to the PRC than what they would have enjoyed as a supplier of a WTO member. See for a discussion on how access to the PRC market under the WTO terms could still face various restrictions, Shepard, C. & Cardno, N. (2003). New Opportunities in Hong Kong - the Impact of the CEPA. *International Business Lawyer*, 3, 265.

by the Hong Kong services market. In addition, the PRC banks are supported to develop networks and business in Hong Kong using acquisition. Finally, the Arrangement also reinforces the traditional role of Hong Kong as the intermediary in financial services. It supports certain specific financial sectors like the insurance services listing in Hong Kong. This privilege exemplifies the acknowledgement of the strength of Hong Kong in its traditional functions and its growing importance as a capital market.

In contrast with the financial services sector, the cooperation sought in the tourism sector has a specific focus on promoting tourist inflows from PRC to Hong Kong. Given the travel restrictions PRC imposed upon individual travellers to Hong Kong, the Arrangement sought to permit residents of the southern Guangdong province to undertake individual travel to Hong Kong. Interestingly, the Arrangement has paved the way for enhancing tourism cooperation between both sides and around the larger Pearl River Delta region (which could also include the Macau SAR). This possibility can be seen as a precursor to the broader cooperation sought under the recent Greater Bay Area economic integration program. Vision to improve tourism service standards and enhance the protection of rights and interests of the tourists is also incorporated within the 2003 Arrangement. The CEPA-HK 2003 attached specific importance to both sides' mutual recognition of professional qualifications as it is a crucial enabler for much of services supply in any market. The two sides are encouraged to mutually recognise professional qualifications obtained in each other territory and seek for exchange of each other's professional talents. This provision is particularly relevant for mobility as well as access to the professional opportunities each market offers.

The third major field addressed by the CEPA-HK 2003 focused on trade and investment facilitation. The facilitation is sought to be achieved through the enhancement of transparency and information exchange as well as through conformity of standards. Seven distinct areas of cooperation were exclusively identified, although the possibility for further expansion of the scope and content of the facilitation was recognised. As trade and investment being the primary fields, the remaining areas of cooperation contemplated under the Arrangement included issues that could be of common interest to both the fields and issues that would be of specific relevance to trade in particular. For example, the areas of cooperation related to customs clearance, commodity inspection and quarantine, and Chinese traditional medicine and other medical products are mainly related to trade in goods. On the other hand, the areas of cooperation like electronic business, small and medium enterprises, and transparency in law and regulations would be of common interest to both trade and investments. A distinct set of rules governing the seven areas of cooperation is provided through a separate Annex to the Arrangement. Each area is subjected to the guidance and coordination of a Joint Steering Committee (JSC) set up under the Arrangement.⁸

Despite the special concessions and treatment guaranteed under the Arrangement, both sides are conferred with the freedom to adopt or maintain measures of exception with compatibility to the WTO regime. However, they should strive to refrain from increasing the restrictive measures that could adversely impact the implementation of the Arrangement. Three key institutional features mark the organisational characteristic of the Arrangement, which includes the JSC, the Liaison Office and Working Groups. Among them, the JSC is the primary body conferred with the powers of interpretation, implementation supervision, resolution of disputes, drafting CEPA amendments, steering the working groups, and handling miscellaneous implementation issues. While the JSC is designed to make its decisions only through consensus, disputes concerning the Arrangement should be resolved through consultation between the two sides. Finally, CEPA-HK 2003 also prohibits that the actions taken under the Arrangement should not cause nullification and impairment of benefits or obligations arising for each side from their respective existing agreements to which they are a party.

THE CONSTANT EVOLUTION OF LEGAL STANDARDS GOVERNING FREE TRADE AND INVESTMENT LIBERALISATION SINCE CEPA 2003

CEPA has been one of the most active cooperation that has constantly been evolving since its inception. From 2003 till 2019, it witnessed expansion and key developments almost every year. Although closely analysing each of the legal instruments in this period is beyond the scope of this paper, key developments and legal features relevant to this paper's objectives will be examined. While the present draft of the paper will provide a selective overview of those issues, the presentation at the conference will cover additional issues, and the planned journal paper after the conference will undertake a comprehensive treatment of the remaining pertinent issues. Based on the aspiration set by the CEPA-HK 2003 to expand the initially prescribed list of goods of Hong Kong origin entitled for the zero-tariff treatment, the PRC started to extend the treatment to another set of 713 goods⁹ through a 2004 supplement (hereinafter CEPA-HK Supplement 2004), which also included a specific schedule prescribing origin criterion for each of those goods to be eligible for the tariff preference. In trade in services, the CEPA-HK Supplement 2004 granted further relaxation to market access conditions in the PRC for Hong Kong service providers in the service sectors that were already liberalised in 2003. In addition, the PRC undertook to liberalise and relax conditions of market access for Hong Kong suppliers in various new service sectors¹⁰.

The following year, through CEPA-HK Supplement II 2005, the PRC agreed to liberalise trade in goods and services further, and both sides also agreed to enhance financial cooperation between themselves. The significant features under this supplement governing trade in goods were related to rules of origin, in which some amendments relating to the criteria to determine the substantial transformation of a product were introduced. It also recognised the possibility of using additional conditions in certain cases where the amended criteria prove to be inadequate in determining origin. In trade in services, the PRC agreed to introduce further market access relaxation in several service sectors that were already subjected to liberalisation in earlier agreements between the two sides. In furtherance of the financial cooperation, the PRC agreed to permit certain types of securities companies and

⁸ See Annex 6 of the CEPA-HK, 2003.

⁹ This set of 713 goods contained 529 goods that were then currently under production and 184 goods that were proposed to be produced.

¹⁰ See Supplement to the Mainland and Hong Kong Closer Economic Partnership Arrangement 2004, Section 2(2), page 2.

qualified companies in the future's business to set up and operate in Hong Kong.¹¹ Compared to the previous agreements, a conspicuous absence of the provisions seeking to liberalise trade in goods further is visible in the CEPA-HK Supplement III, which was agreed in 2006. However, Supplement III covered trade in services and went beyond to address the issue of trade and investment facilitation. In services, the PRC agreed for further relaxation in the conditions of market access for the sectors already covered and relating to the stores individually owned by eligible Hong Kong-based suppliers. A new field was added to Supplement III, which was the inclusion of the protection of intellectual property rights (IPR) as part of facilitation in trade and investment. By virtue of a new article added to Annex 6 of the CEPA-HK 2003, the two sides underscored the significance of strong IPR protection for their mutual development, trade, and cooperation. They agreed to enhance the protection through cooperation between their relevant departments, including creating a Centre for IPR coordination, exchanging information on IPR laws and implementation, sharing materials and information on IPR protection, and discussing relevant issues about the protection.

In 2007, CEPA-HK Supplement IV further expanded the market access relaxation in the PRC for Hong Kong service providers and included a range of service sectors, including the services relating to convention and exhibition. It also introduced some fundamental changes to the definition of service suppliers and specific requirements relating to the same, especially those related to bank or finance companies and those providing third party international shipping agency services originating from Hong Kong. The 2007 Supplement introduced further measures in three other fields: financial cooperation, facilitation in trade and investment, and mutual recognition of professional qualifications. The financial cooperation targeted to support PRC banks to set up business operations in Hong Kong and fast track or encourage Hong Kong banks to set up in certain urban and rural areas of PRC, respectively. The facilitation was mainly limited to offering support and cooperation to Hong Kong by the PRC in the organisation of large conventions and exhibitions. To enhance the mutual recognition of qualifications, exchanges between relevant authorities or professional bodies of the two sides and a working group focused on registration and practice in the construction sector were agreed upon. CEPA-HK Supplement V 2008 also addressed the same set of fields as the previous supplement. It included an agreement for further market access relaxation to be granted by the PRC in 17 service sectors. It also contained more expansive trade and investment facilitation measures, which now covered electronic commerce, trademark protection, and cooperation relating to branding and protection of brands. In the field of mutual recognition, the Supplement V of 2008 exclusively covered accounting and constructions sectors.

CEPA Supplement VI in 2009 followed up with the same set of issues as the previous one, in which the service sector relaxation covered 20 different sectors. Among those sectors, the prominent ones included research and development, real estate, public utility, distribution, cultural, banking, securities, as well as maritime, air and rail transportations.¹² On the frontier of financial cooperation, PRC undertook to permit its securities companies to establish subsidiaries in Hong Kong.¹³ In addition, measures to introduce an exchange trade fund in the PRC consisting of stocks from the Hong Kong exchange were promised. Finally, a concrete initiative to mutually recognise qualifications in the areas of taxation, construction, real estate, and printing was made. In contrast to the previous supplements, Supplement VII in 2010 had a substantial focus on facilitation. The PRC's relaxation on the trade in services continued with other prominent sectors like technical and product testing and analysis, speciality design, and social services. However, the field of financial cooperation just contained an undertaking to support setting up subsidiaries of the PRC futures companies in the Hong Kong market. However, in the field of facilitation, Supplement VII introduced extensive provisions.

Firstly, various areas of cooperation were agreed upon in which education was included as the tenth in the list. Among others, the area of cooperation relating to industries was elaborately addressed in Supplement VII. Cooperation in industries received particular attention as both sides acknowledge its importance in complementing the competitive advantage of each other. Specific cooperation mechanism along with the details of the content of the cooperation was prescribed concerning five distinct industries, namely traditional Chinese medicine and medical products, convention and exhibition, culture, environment, and innovation and technology.¹⁴ In furtherance of cooperation in education, a new article was added to Annex 6 of CEPA-HK 2003, in which different areas of cooperation in education were agreed upon. Finally, some distinct fields of cooperation impacting the trade in goods emerged from Supplement VII that covered inspection of commodities and quarantine, safety and quality of food and food standards.

2011 witnessed the conclusion of Supplement VIII of CEPA, which brought back the issue of trade in goods after some of the previous supplements did not address the same. Revision to the rules of origin governing bilateral trade in goods was the primary purpose.¹⁵ Changes were made to the definition of value-added content, and a specific formula to calculate the same was prescribed. It is important to note that the amendments emphasised that the definition of product development and the calculation of value-added content should be consistent with the relevant requirements of the GATT 1994¹⁶. This evidences the earnest efforts of both sides to ensure that their bilateral trade liberalisation pact is always in consonance with their respective multilateral obligations under the WTO regime. In the spirit of this conscious effort and the conspicuous reference to the GATT provisions, it is possible to argue that any future interpretation of the relevant provisions of the CEPA agreements between the two sides should go beyond the CEPA framework and make necessary reference to the pertinent WTO obligations of the two sides to ensure compatibility between the two legal regimes.

¹¹ See Supplement II to the Mainland and Hong Kong Closer Economic Partnership Arrangement 2005, Section III, para 1 and 2.

¹² See Annex to the Supplements and Amendments VI to the Mainland's Specific Commitments on Liberalisation of Trade in Services for Hong Kong 2009.

¹³ For a detailed treatment of the implications of the CEPA for the securities market, see Harrison, M. (2004). The Implications of CEPA for the Hong Kong Securities Industry. *SFC Quarterly Bulletin*, 55, 1-9.

¹⁴ See Amendments to Article 9 of Annex 6 of CEPA-HK 2003, Section 9.1-Section 9.5 as defined in Supplement VII to CEPA 2010, Part.III, pp 4-10.

¹⁵ The amendments were about Annex 2 of CEPA-HK 2003, Article 5(1)(3).

¹⁶ See GATT 1994, Article VII.

In trade in services, the eighth supplement included the PRC undertaking to relax further market access conditions in thirteen sectors, including insurance and others subjected to liberalisation in previous agreements. The terms of service suppliers and related requirements defined in Annex 5 of the CEP-HK 2003 were changed.¹⁷ The financial cooperation agreed on the eighth supplement to CEPA focused on Hong Kong's utility as an international financial platform for developing international business by the PRC banks. It also provided support to the insurance service providers from Hong Kong entering the PRC insurance market. Cooperation to promote tourism received more elaborate attention that included an emphasis on services quality, strengthening of relevant laws and regulations, promotion of joint tourism overseas, expansion of cooperation between tourism enterprises and related activities, and joint personnel training as well as the development of Hong Kong in cruise tourism.

Finally, in trade and investment facilitation, enhanced cooperation between the two sides in food safety, inspection, and quality that were already covered in previous supplements and related fields of innovation, science, and technology were agreed upon. Supplement IX in 2012 continued the trend with PRC relaxation of its services market access conditions in twenty-one sectors followed by further undertakings to strengthen financial cooperation. In this regard, a vital issue initiated was the PRC undertaking to modify and improve its domestic law requirements for its enterprises, intending to raise capital through the overseas listing to enable their listing in the Hong Kong stock exchange. Cooperation was also sought for the development of commodity futures in both markets. Lowering of eligibility for Hong Kong financial institutions to seek qualified foreign institutional investor (QFII) status in the PRC and support for them to set up relevant companies in dealing with securities, fund management and futures in the PRC were also promised. In the field of mutual recognition of qualifications, the CEPA Supplement IX sought the recognition of qualifications between PRC professionals in real estate appraisals and Hong Kong general practice surveyors, as well as between PRC cost engineers and Hong Kong quantity surveyors¹⁸.

Finally, regarding facilitation, both parties agreed to take efforts towards setting up clearance facilitation and related measures for the importation of wine to the PRC through Hong Kong as part of the cooperation on food safety, quality and inspection that was already initiated in the earlier supplements. The last supplement in the series was made in 2013 with the signing of CEPA Supplement X in 2013. Supplement X increased the relaxation of market access conditions of the PRC in 28 service sectors, including attractive sectors like hospital services, translation and interpretation, technical testing and analysis, freight forwarding and trademark. It also prescribed detailed requirements that should be satisfied in order to qualify as a contractual service provider from Hong Kong¹⁹. Financial cooperation under this supplement required both sides to recognise the fund products of each other and extended support for Hong Kong insurers to partake in the traffic accident liability segment of the PRC insurance market. Finally, in terms of facilitation, the supplement provided an elaborate set of provisions governing certification, accreditation, and standardisation management as a part of the ongoing cooperation relating to commodity inspection, food safety, quality etc. As part of facilitating the protection of IPRs, the supplement initiated the exploration by Hong Kong and Guangdong province of PRC regarding the joint promotion of IP trading and finance and the development of mutual recognition of IP valuation.

As evident from the last supplement to the CEPA, the focus of the liberalisation started to concentrate specifically on the south China province of Guangdong and Hong Kong. This focus was not only because of the geographical proximity of Guangdong and Hong Kong but also due to the strong trade ties between the two and the advanced role played by the Guangdong province in international trade and investment. Following the limited specific reference to Guangdong in the tenth supplement, the PRC and Hong Kong entered into a full-fledged agreement focused on liberalising trade in services in Guangdong in the year 2014. This Guangdong Agreement is based on the progressive liberalisation achieved under the CEPA, and its ten distinct supplements systematically analysed above in this paper. Two separate annexes to the Guangdong Agreement enumerated the market access provision exclusively applicable to trade in services between Guangdong and Hong Kong.

The Guangdong Agreement contained standalone provisions enumerating the principles of national treatment and most favoured treatment. The Agreement also contained carve out provisions to guarantee freedom to both sides to implement prudential measures relating to financial services. Similarly, measures aimed at implementation of monetary, credit and exchange rate policies. Freedom to implement measures to ensure compliance with financial law and the right to introduce restrictive measures on sectors beyond the existing regulations were recognised. Safeguard measures in consonance with the commitments on liberalisation of trade in services under the CEPA were also permitted. Likewise, both sides were permitted to adopt and maintain measures on exceptions consistent with the General Agreement on Trade in Services (GATS) of the WTO. The remaining part of the Guangdong Agreement dealt with specific provisions governing commercial presence, cross border services, telecommunications, cultural services, special procedures and information, and investment facilitation that are quite pertinent to the liberalisation of trade in services between Guangdong and Hong Kong. Although a close introspection of each of the above issues arising in the context of the Guangdong Agreement is beyond the scope of this paper, it is relevant to note that the provisions under this Agreement were considered as the *lex specialis* taking precedence over the provisions of the CEPA and its supplements. In the light of such preponderance attributed to the Guangdong Agreement, it is not difficult to recognise its significance for the regional economic integration initiatives like the greater bay area cooperation.

After the Guangdong Agreement, the CEPA cooperation took the path of consolidation of legal obligations in bilateral trade and development of speciality regimes for other fields of cooperation. In trade cooperation, the CEPA produced two distinct consolidated agreements governing trade in services and trade in goods in 2015 and 2018, respectively. The Consolidated Services

¹⁷ Amendments prescribed were related to Articles 3(1)(2)(1) and 6(1)(1)(7) of Annex 5 of CEPA-HK 2003.

¹⁸ See Section III of CEPA Supplement IX 2012, p.4.

¹⁹ See Supplement X to CEPA 2013, Section I, para.4.

Agreement 2015 was subjected to further amendments in 2019. The need for such a consolidation is evident given the progressive liberalisation of trade in service and goods and the conclusion of ten different supplements spanning over a decade since the CEPA-HK 2003. In addition to the two consolidated agreements governing trade, both sides have concluded two specialised agreements related to bilateral investments and cooperation on economic and technical matters in 2017. The consolidated CEPA Services Agreement, being the latest in the line, gains precedence over the related provisions governing bilateral services trade in CEPA-HK 2003 and its subsequent supplements and the Guangdong Agreement. The CEPA Services Agreement contains eight distinct chapters addressing a range of issues pertaining to bilateral services trade between the two sides, as well as three separate annexes enumerating the specific commitments of PRC and Hong Kong, respectively²⁰ as well as elaborating the elements that would constitute a service supplier and related requirements²¹.

The provisions and the structure of the CEPA Services Agreement 2015 are comparable to those in the Guangdong Agreement 2014 discussed earlier, except for the conspicuous absence of the provisions governing telecommunication and cultural sectors²² that were only present in the latter. Moreover, unlike the Guangdong Agreement, the provisions of this consolidated service agreement was aimed at the liberalisation of the services in the whole of the PRC and not just with one single province. Finally, the 2019 Amendment to the consolidated Service Agreement, in addition to the deletion of the two sectors mentioned above, further increased investment facilitation by mainly dispensing with the requirement of prior approval for Hong Kong service suppliers establishing or making a change of enterprises in the liberalised service sectors of the PRC²³. In addition, the 2019 Amendment Agreement modified and amended relevant tables and annexes to the CEPA Services Agreement 2015 to further increase the openness of the PRC service sectors to Hong Kong.

The two specialised agreements concluded between the two sides in 2017 evidences the intention of both sides to enhance cooperation beyond trade. Firstly, the 2017 investment agreement, in addition to the main text prescribing fundamental mutual investment-related legal obligations of the two sides, contained three distinct annexes. They define an investor, list the specific commitment of the two sides in investment liberalisation, and explain investment protection measures against expropriation. With the objectives of protection and promotion of investments of each other, the Agreement aims to reduce or eliminate all measures of discrimination affecting investments from the other side. The Agreement contains an elaborate definition of critical terms like investment, investor, covered investment etc., and prescribes substantive obligations relating to standards of treatment, national treatment, MFN, etc. The Agreement prohibits any imposition of performance requirements upon investments from the other side or other requirements relating to the appointment of a senior manager or board of directors.

Elaborate provisions prescribe how non-confirming measures in both places could be dealt with and how each side could impose special formalities or seek information relating to the investments originating from the other side. Expropriation related measures, guarantees of compensation of related losses, recognition of the right of subrogation and freedom of transfers relating to the investment are extensively recognised by the investment agreement. Interestingly, the investment agreement combines issues of facilitation of investment and settlement of disputes in a single chapter. This chapter contains general provisions addressing investment promotion and facilitation, obligations of transparency, the creation of an investment committee, and specific dispute settlement provisions for investments originating from each side. The Agreement contains a denial of benefits clause and recognises specific grounds of exception. It also authorises the freedom to impose prudential measures in certain circumstances and excludes most taxation measures from the purview of application of this investment agreement. Finally, it is relevant to note that the investment agreement forbids any compromise to the environment of a host-side in the approval of the investment from the other side.

To supplement trade and investment liberalisation efforts, both sides have concluded the Economic and Technical Cooperation Agreement (hereafter referred as ETCA) in 2017. The Agreement is aimed at enhancing economic and trade cooperation as well as strengthening economic and technical cooperation. One of the cooperation objectives was to encourage Hong Kong to participate in the Belt and Road Initiative (hereafter referred to as BRI) of the PRC. This objective is relevant for the focus of the present paper, namely the significance of trade and investment liberalisation between the two sides for other regional or international economic goals like the GBA or the BRI. In this regard, it is interesting to note that the ECTA firstly seeks to deepen cooperation in different economic and trade matters that are specially related to the BRI. The ECTA prescribes various concrete measures involving both parties to support the BRI projects. In addition to the BRI related specific measures, the ECTA consolidates the cooperation obligations of both sides in various key areas, including those that are agreed between the two sides in different CEPA supplements analysed earlier in this paper. Key areas of cooperation in this regard pertains to financial services, tourism, legal and dispute resolution, accounting, conventions and exhibitions, culture, environment, innovation and technology, education, E-commerce, small and medium enterprises (SMEs), intellectual property, trademark and branding, traditional Chinese medicine, and Chinese medicinal products. Elaborate measures of cooperation in each of these areas are prescribed. Apart from the consolidation and elaboration of the cooperation measures in key areas, the ECTA interestingly introduced a specific chapter to promote sub-regional economic and trade cooperation, which is also very pertinent to the theme of enquiry of this present paper.

²⁰ See Annex 1 and Annex 2 of the Consolidated Agreement on Trade in Services 2015 as amended in 2019.

²¹ See Annex 3, *ibid*.

²² The two sectors were indeed deleted from the purview of the Agreement by virtue of the amendment made in 2019 to the consolidated CEPA Services Agreement of 2015. See Para 1 (iv) of the Amendment Agreement 2019.

²³ However, the exemption from the prior approval requirement was not extended to financial institutions or commercial presence of service providers in forms other than as a company. See the CEPA Agreement on Trade in Services 2015, Article 12 as amended in 2019.

Three distinct sub-regional emphases were added to the ECTA, namely enhancement of cooperation in the Pan-Pearl River Delta (PPRD) region²⁴, support for the participation of Hong Kong in the development of pilot free trade zones (pilot FTZs), and deepen economic cooperation of Hong Kong with three specific fast-developing sub-regional areas, namely Qianhai, Nansha and Hengqin. Identifying the aspirations and the features of the three sub-regional cooperation enshrined in the ECTA should serve as an invaluable facilitator for the GBA economic integration plans. The cooperating sides as well as the private parties that are the intended beneficiaries of the GBA cooperation, should identify the utility and take full advantage of the relevant obligations under the ECTA and other CEPA instruments, including particularly those that have a sub-regional focus for the effective accomplishment of the GBA integration. The first sub-regional focus of ECTA on the PPRD region emphasises the effective use of existing cooperation platforms and liaison mechanisms. It recommends that the advantages of Hong Kong in international finance, trade and shipping should be fully capitalised, and cooperation in specific industries in the PPRD region should be strengthened. Expanding mutual investments and joint exploration of international markets are also prescribed. Encouragement to the enterprises in PPRD to utilise Hong Kong as a platform for exploring BRI investment opportunities and support to nine provinces in the PPRD to leverage their respective advantages to develop various cooperation with Hong Kong are agreed. Interestingly, in this context, the ECTA mandates the promotion of developing the bay area constituted by Guangdong, Hong Kong, and Macau, which is one of the most direct obligations pertaining to the GBA cooperation.

The second sub regional focus was seeking the support of the participation of Hong Kong in developing the pilot FTZs first requires the two sides to enhance notification and information exchanges relevant to the development of the PRC pilot FTZs. Other relevant obligations agreed includes exploration of further liberalisation in the pilot FTZs for Hong Kong service industries, encouragement of Hong Kong's participation in national development strategies through these zones, capitalisation on the strategy to leverage on Hong Kong and Macau to serve PRC and reach out globally, and encouragement of micro, small and medium enterprises and youth in Hong Kong to initiate business in pilot FTZs. Fully utilising the strengths of Hong Kong in various economic frontiers to integrate with the reforms and liberalisation in the PRC pilot FTZs and inventing new developmental modes along with exploring other potential cooperation are some of the other relevant outcomes of the ECTA. The third sub-regional focus calls upon the two sides to deepen Hong Kong's cooperation with the three specific sub-regional areas mentioned earlier. Support is extended to the three sub-regional areas to achieve further liberalisation and enhance economic cooperation with Hong Kong. Finally, the creation of cooperation demonstration zones and support for Hong Kong youth to initiate business in the three sub-regional areas are also prescribed by the ECTA. After the sub-regional focus, the ECTA consolidates various trade and investment facilitation measures achieved through various CEPA supplements in various fields, including mutual recognition of qualifications.

The last major consolidation under the auspices of CEPA took place in 2018, whereby all the major obligations relating to the trade in goods agreed between the two sides since the original CEPA-HK 2003 and its related supplements were systematically and elaborately drafted in the main text of the Agreement on Trade in Goods (hereinafter referred as CEPA-HK Goods Agreement 2018). A separate annex enumerating the rules of origin for specific products are included in the CEPA-HK Goods Agreement 2018). As key provisions of the liberalisation of trade in goods since the inception of CEPA have already been analysed earlier in this paper, further analysis of the specific provision of the 2018 Agreement is not warranted here. However, it is relevant to note that all the provisions analysed earlier in this paper should be verified compared to the pertinent articles of the 2018 Agreement to ensure consistency and compatibility. This comparison is crucial given the emphasis in the 2018 Agreement that many specific provisions of the CEPA and its relevant annexes should be implemented in line with the 2018 Agreement.

Moreover, in case of any conflict between the original CEPA, including its supplements and the 2018 goods agreement, the provisions of the latter will prevail. These provisions highlight the significance of the reference to the consolidated CEPA-Goods Agreement of 2018. Finally, the Annex to the CEPA-Goods Agreement provides a long-consolidated table of rules of origin for various products subjected to the liberalised trade between the two sides. This table is an essential reference for various trading entities from the two sides seeking to utilise the market opportunities offered by the CEPA cooperation between the PRC and Hong Kong.

LEGAL FRAMEWORK GOVERNING GBA COOPERATION

The GBA-Framework Agreement signed in 2017 involved four parties, namely the National Development and Reform Commission (NDRC) and the governments of Guangdong Province, Hong Kong and Macau SARs. Intending to ultimately achieve the Greater Bay Area's development, the GBA-Framework Agreement sought to achieve the same through deepening cooperation between the three regions. Being a regional agreement focused on enhancing cooperation specifically with the Guangdong province, which is geographically adjacent to the two SARs, it provides the possibility of establishing travel bubbles among the three regions during pandemic disruptions. In the light of the experience of the subsequent sporadic outbreaks in the PRC after the first wave of the pandemic, this Agreement paves the way for the SARs to introduce a segmented opening of travel and economic activities only with the Guangdong province, even if travel and transactions with other provinces in the PRC are restricted. Moreover, given the proximity and land links with the province, the SARs could also establish pragmatic pandemic management arrangements to sustain any travel and cross border economic activities even in the event of any sudden spur in the number of Covid-19 cases in either of the three jurisdictions. Although these advantages are incidental, it can be seen that the original motivations of this 2017 agreement concluded before the Covid-19 pandemic outbreak support the realisation of those advantages. Some of the relevant original motivations behind the 2017 Agreement includes the need to fully leverage the integrated advantages of the three regions, participating in high-level international cooperation, enhancing their leading role in the economic development of PRC, nurturing the development of the two SARs, sustaining the prosperity and stability of the two SARs in the long term, etc.

²⁴ See for a study of relevance and impact of CEPA upon the Pan-Pearl River Delta region, Pollard, D. (2005). CEPA and Pan-Pearl River Delta Economic Integration: A Comparative Business Development Perspective. *Global Economic Review*, 34 (3), 309-320.

The enumeration of the general principles in the 2017 Agreement prescribes the key set of objectives, goals and principles governing the economic relations of the three regions. To fully implement the one country, two systems principle²⁵, the Agreement seeks to improve and innovate the cooperation that is mutually complementary and able to promote the development of GBA jointly. Specific cooperation goals concerning each of the three regions are prescribed based on their respective strengths and roles. The common aspect of the goal includes developing GBA as a more dynamic economic region, a quality living circle, a top-class bay area and a world-class city cluster. An interesting set of principles that should drive the cooperation between the three regions are prescribed. The principles emphasise cooperation with essential values like openness, innovation, complementarity aimed at a win-win situation, market-led and government-driven adoption, early and pilot implementation, priority, and pursuit of ecology and green development. The GBA Framework Agreement delineates seven key areas of cooperation focusing on infrastructure connectivity, market integration, development of a global hub for innovation and technology, building a modern system of industries, joint development of a quality living circle, cultivating new strengths for cooperating internationally, and supporting the efforts in establishing other cooperation platforms. Among them, concerning the area seeking to enhance market integration between the three regions, the GBA Framework Agreement makes a specific reference to the implementation of the CEPAs and their supplements PRC has concluded with Hong Kong and Macau, respectively. However, the present paper argues that the relevance of CEPAs is not just limited to the area of market integration, and each of the remaining six areas of cooperation in the GBA Framework Agreement is bound to benefit from specific obligations and legal standards that form an integral part of the CEPA instruments analysed in this paper. Although many parallels are visible, the relevance of specific provisions arising from the CEPA regime in facilitating the achievement of the goals in the other areas of GBA cooperation could be pointed out. For example, in the first area of cooperation, namely the infrastructure connectivity, the CEPA provisions governing trade in services as well as the provisions governing investment facilitation are bound to benefit the development of such infrastructures such as the Hong Kong-Macau-Zhuhai sea bridge connecting the three regions. Such joint infrastructure projects providing exclusive jurisdiction to the three regions in the different parts of the bridge are ideal for effectively implementing any pandemic-related travel and logistics regulations. Similarly, the area of cooperation pertaining to the 'adoption of early and pilot implementation' is also bound to benefit from the relevant legal provisions governing pilot implementation features in the ECTA discussed earlier in this paper. The cooperation agenda focusing on the early and pilot implementation will equally be influential in testing and introducing prompt pandemic response measures when new variant outbreaks emerge to ensure that economic revival plans involving the three regions stay intact.

Finally, the GBA Framework Agreement prescribes a specific institution mechanism to improve the coordination and strengthen the implementation and increase public participation in relevant areas of cooperation. The implementation of the seven critical areas of cooperation under the GBA Framework Agreement was supported by a developmental plan, namely the GBA ODP. It is intended to guide the cooperation and the development of GBA in the period leading up to 2022 and further till 2035. While detailed measures are prescribed in the seven key areas of cooperation, the reference to the CEPA regimes (which includes instruments resulting from PRC-Hong Kong CEPA and PRC-Macau CEPA as well as relevant supplements) is made in the context of the cooperation areas of developing modern service industry system, promoting investment facilitation and trade liberalisation. However, the detailed provisions in all key areas of cooperation could be mapped to specific obligations arising in the CEPA regimes. Given the longer refinement and implementation history of those obligations spanning over a decade, the utility of those obligations in expediting the achievement of the GBA goals should not be underestimated. Similarly, as discussed earlier, any such parallels drawn in the mapping process between the GBA cooperation and specific provisions of the CEPA Hong Kong and CEPA Macau should equally be assessed in light of the economic revival needs of the SARs. Any relevant provisions identified can be used for effectively addressing the adverse economic impact of the pandemic. Finally, the GBA ODP 2019 also draws an implementation strategy. It emphasises strengthening relevant organisations and leadership, steering ahead on significant tasks, preventing and mitigating major risks, including financial risks, and broadening social participation. For the purpose of our ongoing discussion, the broad narrative in the GBA ODP pertaining to the prevention and mitigation of major risks transcending beyond financial risk will be highly utilitarian for the SARs in seeking mitigation of various economic risks resulting from the current pandemic as well as in implementing strategies to prevent economic woes from potential future pandemic outbreaks.

SOME ADVERSE ECONOMIC IMPACT OF THE PANDEMIC AND THE LIMITATIONS IN UTILISING THE CEPA AND GBA COOPERATION

The expansion of bilateral trade and investment regimes and other broader economic cooperation pacts between the PRC and Hong Kong, as well as the resulting volume or value of the economic transactions between the two sides, have witnessed exponential growth since the inception of CEPA-Hong Kong in 2003. The growth, which has been witnessed almost every year since 2003, came to a halt and turned negative since the outbreak of the Covid-19 pandemic in the PRC in late 2019. One of the major causes for the change of the tide is due to the large number of Covid-19 related restrictions imposed by each side in their respective markets as well as upon the cross-border movement of people and transactions. Studies have revealed such a negative impact in various frontiers. For example, during the first three months in 2020, Chinese export orders were found to have reduced by half in both the trade in goods and trade in services and the adverse impact of the trade arising from the pandemic are attributed to three distinct effects, namely disruption in domestic supply, reduction in global demand and contagion effect on disrupted global value chains²⁶.

²⁵ It is also observed that CEPA is the manifestation of the success of the "one country, two systems" principle. See Cabrillac, B. (2004). A Bilateral Trade Agreement between Hong Kong and China: CEPA. *China Perspectives*, 54, 1-13 at 9.

²⁶ See Friedt, F. (2021). The triple effect of covid-19 on Chinese Exports: GVC Contagion Effects Dominate Export Supply and Import Demand Shocks. *VoxEU-CEPR Policy Portal* (21 January) accessed online at <https://voxeu.org/article/triple-effect-covid-19-chinese-exports>.

Among the three effects identified, each of them could be subjected to varying control by the PRC. While the second effect, namely the reduction in global demand, is the most difficult to tackle; the first effect, namely disruption in domestic supply, would be the most controllable. The third effect, namely the contagion effect on global value chains, is also quite challenging for a single market or jurisdiction to control but is better controllable than the second effect of fallen demand. Based on the above premises, it is arguable that the PRC could seek to limit the adverse impacts of the two more controllable effects by harnessing its strength of regional trade, investment and economic cooperation with Hong Kong and Macau SARs. Such an approach is not only relevant to the PRC but also the two SARs, whose economies were also quite adversely affected due to the Covid-19 pandemic related restrictions. Indeed, the border restrictions between the PRC and the two SARs imposed due to the pandemic control measures have caused more adverse consequences to the economies of the two SARs than to the economy of the PRC. For example, due to the border restrictions, the tourism and the related services sectors in Hong Kong and Macau SARs took a big hit as the major drop in individual visits from the PRC was quite substantial²⁷. In addition, the stringent restrictions imposed by the two SARs have also caused an adverse impact on their economic relations with other parts of the world.

A specific focus on the impact of the Covid-19 restrictions upon trade in Hong Kong reveals the scale and extent of the decline. It was reported that the Covid-19 has adversely affected Hong Kong's trade with a trade deficit of more than 342 billion Hong Kong dollars in 2020, which amounted to eight percent of the imports value in the same year²⁸. In addition to the trade deficit, imports and exports trade, as well as wholesale, have all been adversely affected in specific periods of the Covid-19 outbreak. Moreover, Hong Kong's GDP in the first half of the year 2020 witnessed a sharp decline of around nine percentage, although how much of that decline is caused by the outbreak of the Covid-19 and the related restrictions imposed is unclear. It was also assessed that the services exports provided to companies and individuals should have suffered due to evidence of visible slowdown and higher redundancy²⁹. Available data have revealed a substantial reduction of more than 47 percent in total services exports³⁰. One of the key service sectors of Hong Kong, namely the financial services, had fallen by more than four percentage, with the banking segment being the worst affected. As revealed by the earlier analysis in this paper, tourism was one of the critical service sectors that received substantive liberalisation under the CEPA services agreements. However, it is very relevant to note that the tourism services sector was the worst affected during the Covid-19 pandemic due to the imposed stringent and lengthy travel restrictions in the Hong Kong SAR. Because of the restrictions, both inbound and outbound travel has been stopped time and again, affecting several segments of the tourism services sector. Many of them suffered a high double-digit decline, worst among them being convention and exhibition segment, accommodation services segment, retail, and food services segments, respectively³¹.

Even though the public health grounds and the difficulty in controlling the spread of the pandemic in Hong Kong are argued as the reason for the longer travel restrictions imposed, much of it has been attributed to the lack of prompt or appropriate action to tackle the outbreak in Hong Kong. The difficulty in easing travel restrictions with the PRC was due to the difficulty in managing the outbreak well in Hong Kong and not because of the PRC that had indeed brought the outbreak well under control in a relatively quick manner. In comparison with the Macau SAR that restored travelling with the PRC relatively quickly, Hong Kong's travel restrictions with the PRC during the pandemic outbreak was more stringent and more prolonged. This situation reinforces that Hong Kong's difficulty to ease or remove the travel restriction with the PRC was due to its limitations in managing the pandemic outbreak well. The second half of 2020 witnessed some revival in the Hong Kong economy, which is mainly attributed to the improvements in economic performance in the PRC. This improvement evidences the fact that the Hong Kong economy can benefit from the economic performance of the PRC even during the time of severe worldwide trade decline and disruptions. Nevertheless, at the same time, it is doubtful whether Hong Kong has benefitted as much as it could have from its strong trade and investment ties established with the PRC through its several CEPA pacts discussed earlier in this paper.

Arguably, Hong Kong has not derived the full potential of what CEPA or the GBA could offer based on the anecdotal evidence arising from the related challenges it faced in easing or restoring travel between the PRC and Hong Kong. In this regard, a comparison with the neighbouring Macau SAR, which has taken full advantage of its services trade liberalisation with the PRC during the same period, reveals a fundamental distinction. Despite imposing stringent travel restrictions (even more stringent than what Hong Kong had imposed) with the rest of the world, Macau had consciously developed a strategic reopening of travel with the PRC and sustained it continuously. This strategy has provided a significant revival to the tourism industry in Macau SAR during most of the pandemic period. A very well implemented pandemic management governance with the cooperation of the PRC health authorities has prevented any reoccurrence of the pandemic outbreak. The success of the cooperation mechanism between Macau and PRC, including those resulting from the cooperation obligations arising from the PRC CEPA with Macau, has proven to be the key to the rapid revival of the trade in tourism services during the most challenging times resulting from the Covid-19 pandemic outbreak. This comparison of the Macau's success in utilising the cooperation mechanism with the PRC, including its bilateral trade cooperation, provides the best evidence of how the bilateral liberalisation and the trilateral GBA cooperation mechanisms with the PRC have a great potential to serve as a significant economic impetus during troubled times. The limitations in similarly taking advantage of its cooperation and bilateral liberalisation obligations with the PRC during the Covid-19 calls for a self-introspection by the Hong Kong SAR. Hong Kong should develop strategies to utilise better the bilateral cooperation and

²⁷ See for a more specific account on the impact of the restrictions upon the economy of Hong Kong, Parikh, T. (2020) Pandemic Border Restrictions Crush Hong Kong's Economy. *The Diplomat*, (16 December) available online <https://thediplomat.com/2020/12/pandemic-border-restrictions-crush-hong-kongs-economy/>.

²⁸ See Magramo, K. (2021). Coronavirus impact left Hong Kong with a trade deficit of HK\$342.2 billion. *SCMP* (26 January 2021) available online <https://www.scmp.com/news/hong-kong/hong-kong-economy/article/3119301/coronavirus-impact-left-hong-kong-trade-deficit>

²⁹ Research Office of the Legislative Council Secretariat, (2020). Challenges and economic impacts arising from Coronavirus Disease 2019. *Research Brief Issue No. 1, 2020-2021*, December 2020, 1-39 at para. 2.6.

³⁰ *Ibid* at para.2.4.

³¹ *Ibid* at page 14.

liberalisation pacts with the PRC and the regional cooperation obligations under the GBA to shield itself against future economic threats emanating from pandemic outbreaks.

CONCLUSION

Although many of the unprecedented effects of the pandemic are outside the sphere of control of the two SARs, both SARs can try to offset the pandemic related adverse economic effects by taking full advantage of the GBA cooperation and their respective CEPA regimes. Despite the relative infancy of the GBA regime, as argued in this paper, its goals and aspiration could be effectively achieved through a creative engagement of CEPA obligations in the frontiers of liberalisation of trade in goods, services, and investments as well as in the field of economic and technical cooperation. Such a creative engagement of the CEPA obligations as a supplementary means to effectively achieve the aspirations of the GBA requires the mapping of relevant obligations with the specific plan of actions under the GBA to determine their correlation. The findings resulting from the close analysis of the series of CEPA legal instruments in this paper will not only contribute to the determination of the correlation but also highlight how the PRC and the two SARs should, in their future negotiations, introduce relevant amendments to the CEPA and GBA regimes to incorporate appropriate legal measures to shield against potential adverse economic effects of any future pandemic outbreaks. Some of the key obligations arising under the CEPA regime discussed in this paper could be referred to in reaching relevant conclusions in this regard.

First and foremost, one of the essential characteristics of the bilateral pacts with the PRC is that most of the trade and investment obligations are aimed at providing greater market access in the PRC for traders, services providers, and investors from Hong Kong SAR than the other way around (Similar characteristics could be seen in CEPA-Macau as well). This characteristic evidences the unilateral concessions granted to the SARs by the motherland, a special treatment that the two regions could not expect with any other trading partners within or outside the sphere of the WTO regime. The motivation for the PRC to grant such a special treatment derives from the paramount principle of one country two systems. As PRC exercises full sovereignty over the two SARs, their bilateral trade and investment relations must gain a distinct consideration and weightage for any fight against economic distress in the two SARs. This proposition does not mean that other external economic relations of the two SARs need to be ignored or underestimated. Although such economic links and relations can play an essential role in the medium and long term, prioritising PRC's role in economic revival will be more expeditious and effective. The utility of the CEPA in addressing economic disruptions affecting the two SARs could be discussed regarding various specific obligations arising from the CEPA and its significance/potential in addressing various economic disruptions resulting from the Covid-19 pandemic. However, in the interest of space, reference to some of the most affected forms of trade in Hong Kong during the pandemic outbreak will aid the conclusion of this paper regarding the specific utility of CEPA. This discussion should be seen in the light of the similar analysis earlier in this paper relating to the significance of the GBA Framework Agreement and the GBA ODP.

As evident from the previous discussion, the tourism services in Hong Kong has been the most affected sector by the Covid-19 pandemic. Ironically, tourism services under the CEPA regime have been one of the widely covered sectors. Tourism has been receiving specific attention since the liberalisation of the trade in services under the CEPA. Moreover, the analysis in this paper reveals that tourism has been primarily focused on promoting tourism inflows from the PRC to Hong Kong and not the other way around. In addition, as noticed earlier, the CEPA cooperation also paved the way for the promotion of tourism services in the region, including the Macau SAR. So, the CEPA lead tourism enhancement offers a great source of developing and sustaining tourism services in Hong Kong SAR, which could be utilised effectively during pandemic outbreaks and other similar disruptions. Related liberalisation commitments should ideally be enhanced with further obligations to harmonise public health care and quarantine measures between the PRC and Hong Kong (and Macau SAR) through possible future amendments to CEPA instruments.

The expanded agenda on tourism-related cooperation and further liberalisation in the tourism sector, as seen in the CEPA supplements, provide some direction for further consolidation of the cooperation with the PRC. For example, as noted earlier, the eighth supplement to the CEPA-HK expanded the tourism-related cooperation to include matters like strengthening relevant laws and regulations. This expansion could be one of the related CEPA mandates that could be utilised to improve related public health laws and regulations that strongly impact the bilateral or regional tourism sector and the rendering of related services. Similarly, another agenda on the eighth supplement that aims to promote joint tourism overseas could also be a pertinent provision for the PRC and Hong Kong to jointly design selective tourism bubbles with other jurisdictions that are relatively free from the pandemic. For example, the travel relaxation between the PRC and Singapore was implemented in 2021. In contrast, a travel bubble between HK and Singapore could not be implemented on time as planned during the same period. Travel relaxation or tourism reopening plans, which have a common third country destination like the above example, could be assessed under the CEPA-HK eighth supplement joint tourism overseas agenda to determine whether a tripartite arrangement would be able to address specific challenges, which would otherwise be more difficult to overcome like those faced in the delayed Singapore Hong Kong travel bubble plans. The above suggestions are intended to indicate some examples of how specific obligations in the CEPA could be creatively engaged to address some of the significant trade and economic challenges arising out of public health calamities.

In closing, it is emphasised that although both the CEPA and the GBA regimes have been concluded in the pre-Covid-19 years, specific provisions of the relevant legal instruments need to be revisited in light of the adverse economic impact caused by the pandemic. As some of the specific provisions of the two regimes analysed in this paper are found to be relevant in tackling the economic impact of the pandemic, a more detailed study of the specific provisions is bound to reinforce its utility. Such studies are crucial to ascertain the renewed significance of the two regimes for the economic revival of the SARs from the adverse impact caused by the pandemic. It is important to reinforce that the above conclusion relating to the significance of the existing economic cooperation agreements with the PRC as a panacea for the pandemic related economic woes is not just utopian but pragmatic. The

practical relevance is already evident from the example of Macau SAR's success in utilising its bilateral cooperation with the PRC. Especially the successful establishment of a joint public health coordination mechanism during the Covid-19 pandemic to restore the tourism flows and related services between the two markets in a relatively short period is the point in order. Similar coordination between the PRC and Hong Kong and between the three markets, including the Macau SAR, is feasible in various fields of economic relations. Their trilateral cooperation under the auspices of their combined efforts using the CEPA and the GBA is one of the best mechanisms available for the two SARs to shield themselves against any future public health prompted economic disruptions.

REFERENCES

- Agreement between the Mainland and Hong Kong on Achieving Basic Liberalisation of Trade in Services in Guangdong 2014
Agreement Concerning Amendment to the CEPA Agreement on Trade in Services 2019.
Amendment Agreement 2019 to the Closer Economic Partnership Arrangement Consolidated Agreement on Trade in Services of 2015.
Annex to the Supplements and Amendments VI to the Mainland's Specific Commitments on Liberalisation of Trade in Services for Hong Kong 2009.
Cabrillac, B. (2004). A Bilateral Trade Agreement between Hong Kong and China: CEPA. *China Perspectives*, 54, 1-13.
CEPA Agreement on Economic and Technical Cooperation 2017.
CEPA Agreement on Trade in Goods 2018.
CEPA Consolidated Agreement on Trade in Services 2015.
CEPA Investment Agreement 2017.
Closer Economic Partnership Arrangement (CEPA Hong Kong) 2003.
Closer Economic Partnership Arrangement Supplements II-X, 2005-2013.
Framework Agreement on the Development of the Greater Bay Area 2017.
Friedt, F. (2021). The triple effect of covid-19 on Chinese Exports: GVC Contagion Effects Dominate Export Supply and Import Demand Shocks. *VoxEU-CEPR Policy Portal* (21 January) accessed online at <https://voxeu.org/article/triple-effect-covid-19-chinese-exports>.
Harrison, M. (2004). The Implications of CEPA for the Hong Kong Securities Industry. *SFC Quarterly Bulletin*, 55, 1-9.
Magramo, K. (2021). Coronavirus impact left Hong Kong with a trade deficit of HK\$342.2 billion. *SCMP* (26 January 2021) available online <https://www.scmp.com/news/hong-kong/hong-kong-economy/article/3119301/coronavirus-impact-left-hong-kong-trade-deficit>
Outline Development Plan for the Greater Bay Area 2019.
Parikh, T. (2020) Pandemic Border Restrictions Crush Hong Kong's Economy. *The Diplomat*, (16 December) available online <https://thediplomat.com/2020/12/pandemic-border-restrictions-crush-hong-kongs-economy/>.
Pollard, D. (2005). CEPA and Pan-Pearl River Delta Economic Integration: A Comparative Business Development Perspective. *Global Economic Review*, 34 (3), 309-320.
Protocol on the Accession of the People's Republic of China to the WTO 2001.
Report of the Working Party on the Accession of China 2001.
Research Office of the Legislative Council Secretariat, (2020). Challenges and economic impacts arising from Coronavirus Disease 2019. *Research Brief* Issue No. 1, 2020-2021, December 2020, 1-39.
Shepard, C. & Cardno, N. (2003). New Opportunities in Hong Kong - the Impact of the CEPA. *International Business Lawyer*, 3, 265.
Supplement to the Mainland and Hong Kong Closer Economic Partnership Arrangement 2004.

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