

Legislative Dilemmas and Pathway Exploration for the "Second Line" Control of Hainan Free Trade Port under the Background of Closed-Loop Operation

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Abstract

The island-wide closed-loop operation is the "Number One Project" for the construction of the Hainan Free Trade Port. As the core component of the closed-loop operation, the "second line" control directly impacts the effectiveness of the "first line" opening-up policies and the bottom-line security of the national trade control system. Currently, the "second line" control faces several legislative dilemmas, including unclear allocation of legislative authority between central and local governments, tension between customs supervision systems and the facilitation needs of the free trade port, ambiguity in the legal nature of cargo flow between China's mainland and Hainan, and a lack of sufficient legal authorization for information-based supervision methods. Based on observations of the preparatory work for Hainan's closed-loop operation and drawing on the mature experiences of international free trade ports, this paper proposes practical pathways. These include clarifying the boundaries of central and local legislative authority, issuing the "Special Provisions on Customs Supervision for Hainan Free Trade Port," establishing a "three lists" management system, and strengthening legal authorization for digital supervision, aiming to provide a reference for the legal guarantee of the closed-loop operation.

Keywords

Hainan Free Trade Port; Closed-Loop Operation; Second Line Control; Customs Supervision; Legislative Dilemma.

1. Introduction

According to the deployment of the "Master Plan for the Construction of Hainan Free Trade Port," Hainan officially commenced island-wide closure on December 18, 2025. The core essence of the closed-loop operation is "opening the first line, controlling the second line, and ensuring freedom within the island." "Opening the first line" implies a high degree of freedom for the flow of goods, capital, and people between Hainan and overseas regions. "Controlling the second line" requires effective supervision of the flow between Hainan and China's mainland to prevent duty-free goods from illegally entering the mainland, mitigate smuggling risks, and maintain national trade control order.

The "second line" control is not simply about setting up checkpoints and conducting inspections; it represents a profound restructuring of the regulatory system[1]. It involves a transformation of the customs supervision model from traditional port inspection to an integration of port, territorial, and information-based modules. It also entails reshaping the flow rules for various elements such as goods, articles, and means of transport, and furthermore, it involves the reallocation of supervisory powers between central and local governments. These changes must have a legal basis and require systematic legislative support.

However, investigative research reveals numerous legislative challenges facing the "second line" control at present. Superior laws such as the Customs Law and the Foreign Trade Law have not yet made special provisions for the closed-loop operation of the free trade port. The boundaries of Hainan's local legislative authority in areas of central jurisdiction, such as customs supervision, are ambiguous. Furthermore, the legal validity of information-based supervision methods requires clarification. This paper aims to confront these legislative dilemmas based on Hainan's actual situation and explore practical and feasible solutions.

2. Institutional Connotation and Practical Foundation of the "Second Line" Control

2.1. The Normative Connotation of the "Second Line" Control

From an institutional design perspective, the "second line" control primarily encompasses four levels: goods supervision, articles supervision, means of transport supervision, and risk prevention and control. Regarding goods supervision, goods transported from Hainan Free Trade Port to the mainland are generally supervised as imported goods, with customs duties and import taxes levied. However, goods produced by enterprises in encouraged industries that meet policy conditions and contain no imported materials or where the value added from processing with imported materials exceeds a certain proportion may, upon approval, enter the mainland duty-free. Regarding articles supervision, articles carried or mailed by passengers from Hainan into the mainland are subject to supervision and taxation as stipulated. The offshore duty-free shopping policy will be adjusted post-closure to "an annual duty-free quota of 100,000 yuan per person with unlimited frequency," but risks of "group purchasing and reselling" smuggling must be prevented. Regarding means of transport supervision, networked supervision of transport vehicles entering and leaving Hainan will be implemented to track their travel routes and cargo information. Regarding risk prevention and control, the "second line" checkpoints will rely on an information-based supervision platform to achieve intelligent identification, precise inspection, and efficient clearance, enabling the accurate targeting of high-risk goods and the rapid release of low-risk goods through big data analysis.

2.2. Progress and Deficiencies in Current Legislative Preparations

Hainan attaches great importance to the legislative guarantee for its closed-loop operation and has made certain progress in local legislation in recent years. The Provincial People's Congress and its Standing Committee have issued supporting regulations such as the "Hainan Free Trade Port Anti-Consumer Fraud Provisions" and the "Hainan Free Trade Port Several Provisions on Punishing Dishonesty in Duty-Free Shopping," providing initial normative frameworks for maintaining market order and building a credit system post-closure. At the provincial government level, policy documents like the "Hainan Free Trade Port Plan for Port Layout" and the "Hainan Free Trade Port Work Plan on Anti-Smuggling for Closed-Loop Operation" have been formulated, making specific arrangements for port facility construction and anti-smuggling efforts. The General Administration of Customs has also issued individual regulations such as the "Measures of the Customs for the Administration of Goods Entering and Leaving the Yangpu Bonded Port Area of Hainan," providing operational guidelines for customs supervision in specific areas.

However, overall, the existing legislation appears fragmented, lacking a systematic legal framework to govern the "second line" control. Notably, there is still a lack of clear legal basis for the core systems of the "second line" control-such as how to identify goods as originating from Hainan, how to calculate processing value-added, how to implement credit-based supervision, and how to utilize information-based methods. This deficiency makes it difficult to meet the actual regulatory needs after the closed-loop operation commences.

3. Analysis of Legislative Dilemmas for the "Second Line" Control

3.1. Ambiguity in the Allocation of Legislative Authority between Central and Local Governments

The primary legislative dilemma facing the "second line" control is the unclear division of legislative authority between the central and local governments[2]. Matters such as customs supervision, tariff collection, and import-export controls have traditionally fallen under central jurisdiction. Although the "Hainan Free Trade Port Law" grants the Hainan Provincial People's Congress and its Standing Committee certain legislative adaptation powers, the scope and boundaries of this adaptation power in the field of customs supervision remain poorly defined. This ambiguity creates a practical predicament: the "second line" control post-closure involves numerous operational rules that need to be tailored to local conditions. If legislation were entirely at the central level, it would be difficult to adapt to Hainan's diverse practical needs. Conversely, if Hainan were to legislate locally, it might risk infringing upon central jurisdiction. Consequently, some innovative regulatory measures are caught in a stalemate where authorities dare not legislate or find it impossible to do so. An effective legislative coordination mechanism between central and local authorities has yet to be established, directly hindering the pace of institutional innovation for the "second line" control.

3.2. Insufficient Alignment between Customs Supervision System and Facilitation Needs

There is a clear tension between the current legal framework for customs supervision, primarily the "Customs Law" and its supporting regulations, and the facilitation goals of the closed-loop operation. The existing system is designed around traditional port inspection models, emphasizing physical fencing, case-by-case inspections, and labor-intensive approaches. In contrast, the "second line" control aspires to a modern supervision model that is effective, liberalizing, and efficient. Specifically, the legally mandated inspection ratios lack flexibility; maintaining high inspection rates would hinder the efficiency of cargo flow, while lowering them exposes frontline enforcement officers to accountability risks. Furthermore, the legal requirements for checkpoint setups may not align with the actual conditions of various land, sea, and air channels post-closure. The scope and methods for exercising customs audit authority within the island's territory also lack clear stipulations[3]. These institutional mismatches place customs authorities in a dilemma when balancing control and liberalization, making it difficult to fully meet enterprises' expectations for clearance efficiency while effectively preventing supervisory risks.

3.3. Lack of Rules Governing the Legal Nature of Cargo Flow

Legally, goods entering China's mainland from Hainan post-closure are treated as "imports." However, this type of "import" differs fundamentally from traditional cross-border imports, and the current legal framework lacks targeted rules to address this distinction.

Goods might originally be domestically produced, merely undergoing simple processing or storage in Hainan before entering the mainland. Alternatively, goods might contain imported materials, but the value-added portion was created in Hainan. For these scenarios, existing laws lack a clear definition of "goods originating from Hainan," lack detailed rules for calculating "value-added exceeding thirty percent," and the criteria for identifying "encouraged industry enterprises" may be misaligned with actual business operations. The absence of these rules creates uncertainty for enterprises during declaration and a lack of uniform standards for customs enforcement, impacting the credibility of law enforcement and increasing enterprises' compliance costs and institutional transaction expenses.

3.4. Insufficient Legal Authorization for Information-Based Supervision Methods

The "second line" control relies heavily on information-based supervision platforms, including cargo tracking systems, risk analysis systems, and smart checkpoint systems. However, the construction and use of these new supervision methods face multiple legal obstacles. Regarding data collection authority, these platforms require collecting data on enterprise production operations, transport vehicle trajectories, and personal consumption. The legal basis for such collection is currently insufficient, allowing enterprises to legitimately question the legality of the data collection. Regarding data sharing mechanisms, data sharing among customs, market regulation, transportation, taxation, and other departments involves departmental responsibilities and trade secret protection, lacking clear legal norms. This leads to persistent "data silos." Regarding the evidentiary validity of electronic data, the status of electronic data generated by supervision platforms as evidence in administrative penalties and criminal prosecutions requires legal confirmation. Doubts about the evidentiary validity of electronic data would directly undermine the authority and effectiveness of supervisory enforcement. This lack of legal authorization prevents technological means from fully playing their intended supporting role in the "second line" control.

4. Feasible Pathways to Resolve the Legislative Dilemmas

4.1. Clarify the Boundaries of Legislative Authority between Central and Local Governments

To solve the dilemma of the allocation of legislative authority between the central and local governments, it is necessary to strive for the necessary legislative space for Hainan in various ways. On the one hand, in accordance with Article 10 of the Hainan Free Trade Port Law, Hainan Province can request the Standing Committee of the National People's Congress to make authorization decisions on specific matters in the "second-line" control, making it clear that Hainan enjoys legislative flexibility in customs supervision and operation norms, risk prevention and control measures, credit management systems, etc., and provide a clear legal basis for local innovation.

On the other hand, the General Administration of Customs and Hainan Province can jointly study and formulate the "List of Legislative Matters for the "Second Line" of Hainan Free Trade Port to Control the Central and Local Governments, which clearly defines which matters are legislated by the central government, which matters are legislated by Hainan, and which matters are jointly legislated by the central and local governments, so as to avoid legislative stagnation caused by unclear authority.

On this basis, establish a legislative coordination mechanism between the General Administration of Customs and the Hainan Provincial People's Congress, and conduct joint research, joint drafting, and separate deliberation of legislative projects involving "second-line" control, so as to ensure that central and local legislation are connected and form a joint force, which not only maintains the unity of the central authority, but also respects the initiative of local innovation. Drawing on the experience of Singapore and other countries in dealing with the division of regulatory powers between the central and local governments, it has clear authorization through the Customs Law while retaining the authority of local governments in formulating detailed operating rules, which has reference value for Hainan to handle the legislative relationship between the central and local governments.

4.2. Formulate the "Special Provisions on Customs Supervision for Hainan Free Trade Port"

To address the tension between the customs supervision system and facilitation needs, it is recommended to issue the "Special Provisions on Customs Supervision for Hainan Free Trade Port" as an administrative regulation of the State Council. This would provide a clear legal basis for innovative supervision measures. The provisions should establish the fundamental principles of risk-orientation, credit-based classification, information sharing, and intelligent supervision, fundamentally altering the institutional logic of traditional customs supervision.

In terms of specific institutional design, the provisions should clarify the method for identifying "goods originating from Hainan," detail the criteria for determining "substantial processing" and the calculation method for "value-added exceeding thirty percent," addressing the rule-based needs of enterprises for declaration and customs for verification. Concurrently, the legal status of credit-based supervision should be established, authorizing customs to establish an enterprise credit management system. This would include specifying the scope of credit information collection, assessment procedures, objection handling mechanisms, and defining the facilitation measures for high-credit enterprises and the strict supervision measures for low-credit enterprises, enabling the precise allocation of supervisory resources.

Singapore's mature corporate credit classification system provides an excellent model. Its practice of implementing differentiated inspection levels based on enterprises' compliance records and internal control levels has proven effective in balancing regulatory efficiency and trade facilitation. Furthermore, the provisions should regulate the legal validity of electronic supervision tools, explicitly defining the legal status of electronic seals, smart checkpoints, and tracking systems, and stipulating the rules for using electronic supervision records as evidence in administrative penalties and criminal prosecutions, providing legal support for smart supervision.

4.3. Establish a "Three Lists" Management System

To address the ambiguity in defining the legal nature of cargo flow, a "three lists" management system could be established to clarify rules and standardize operations.

First, the commerce department, in conjunction with customs, should formulate a "List of Goods Originating from Hainan Free Trade Port Eligible for Zero-Tariff Entry into the Mainland." This list would specify the scope of goods qualifying for zero-tariff entry and establish a dynamic adjustment mechanism based on industrial development needs, enabling enterprises to clearly assess product eligibility[4]. Second, customs should formulate the "Administrative Measures for Processing Value-Added Calculation." These measures would clarify the calculation method for the value-added rate, expense items permitted in the calculation, and situations requiring exclusion, providing a unified technical standard for enterprise declarations and customs verification, thereby avoiding disputes arising from inconsistent calculation criteria. Third, the development and reform department, in collaboration with relevant authorities, should formulate the "Administrative Measures for Identifying Encouraged Industry Enterprises in Hainan Free Trade Port." This measure would define identification criteria, review procedures, and dynamic adjustment mechanisms, and facilitate automatic comparison of enterprise qualifications with the customs supervision system to ensure policy benefits accurately target intended enterprises.

Through the synergistic effect of these three systems, the legal concept of "originating from Hainan" can be translated into specific rules that are operable, predictable, and verifiable. Hong Kong's negative list combined with risk-based supervision model offers insights for designing this "three lists" system. Its practice of clarifying controlled goods lists and implementing risk assessment for general goods ensures compliance with national trade control requirements while minimizing regulatory interference with normal trade.

4.4. Strengthen Legal Authorization for Digital Supervision

To address the insufficient legal authorization for information-based supervision methods, specialized legislation should be enacted to provide a solid legal foundation for smart supervision.

It is recommended to issue the "Hainan Free Trade Port Provisions on Data Application for Smart Supervision." This legislation should primarily address legal issues at three levels: data collection, data security, and data application. Regarding data collection, it should specify that the scope of enterprise data collected by customs is limited to information directly relevant for risk analysis. It should mandate informing enterprises and signing data usage agreements before collection, safeguarding enterprises' right to know and consent, and preventing unwarranted expansion of data collection scope. Regarding data security, it should clearly define the responsible entities for data security protection and the protection standards, stipulate legal liabilities for data breaches, and establish a tiered protection system for trade secrets and personal information, enhancing trust from enterprises and individuals in data collection. Regarding data application, it should stipulate that system alerts can serve as grounds for "reasonable suspicion" to initiate inspections, but explicitly state that they cannot solely constitute conclusive evidence. Final judgments should still rely on evidence obtained through subsequent verification. This approach leverages the risk-warning function of technological tools while safeguarding the procedural legitimacy of enforcement actions. The electronic seal supervision model implemented in the Dubai Free Zone offers a valuable reference. Its "Unified Customs Law" explicitly authorizes the legal validity of electronic supervision tools and stipulates that electronic trajectory data can be used as law enforcement evidence. This experience demonstrates that the application of technological tools requires corresponding legal systems for confirmation and protection.

5. Conclusion

Customs closure operation is a key battle in the construction of Hainan Free Trade Port, and "second-line" control is the core link of customs closure operation. The current legislative dilemma is essentially the incompatibility between the traditional regulatory system and the new form of openness, the run-in process between the central authority and local innovation, and the generational gap between the legal system and technological development. Solving these dilemmas requires not only courage and responsibility, but also wisdom and patience.

Based on the actual situation of Hainan, the feasible path is not to wait for a perfect top-level design, but to build a "second-line" legal system that meets the actual situation of Hainan and meets the needs of customs closure under the framework of the Hainan Free Trade Port Law. This system should ensure that the central authority is not lacking, local innovation is not offside, enterprise expectations can be judged, regulatory efficiency can be guaranteed, and law enforcement behavior is supported. For Hainan, the most urgent task at present is not to pursue a large and comprehensive legislation, but to focus on the most prominent and urgent problems in the "second line" control, and introduce a number of small incision laws and regulations as soon as possible to test and improve them in actual combat. After all, the countdown to the customs closure operation will not stop, and the pace of rule of law protection must keep up and go steadily.

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