

NEW ASIAN REGIONALISM IN INTERNATIONAL ECONOMIC LAW

This book provides the first systematic analysis of new Asian regionalism as a paradigm shift in international economic law. It argues that new Asian regionalism has emerged amid the Third Regionalism and contributed to the New Regional Economic Order, which reinvigorates the role of developing countries in shaping international trade norms. To substantiate the claims, the book introduces theoretical debates and evaluates major regional economic initiatives and institutions, including the ASEAN+6 framework, APEC, the CPTPP and the RCEP. It also sheds light on legal issues involving the US-China trade war and the COVID-19 pandemic, as well as trade policies of Asian powers, the European Union and the United States. Hence, the legal analysis and case studies offer a fresh perspective of Asian integration and bridge the gap between academia and practice.

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PREFACE

The impasse of the World Trade Organization (WTO) Doha Round has galvanized trade and investment agreements in the Asia-Pacific region to proliferate at an unprecedented rate. This book provides the first systematic analysis of new Asian regionalism as a paradigm shift in international economic law. It represents the culmination of my observations and research in the past decade, taking into account the impact of recent mega-regional trade pacts, US-China trade tensions and the COVID-19 pandemic. The main contribution of the book is to fill a major gap in the literature on the evolving legal regimes of Asian regionalism. By introducing theoretical lenses and explaining business implications, I hope to facilitate interdisciplinary dialogues between regionalism studies in law and international relations and to bridge academia and practice in global economic governance.

I coined the terms the “Third Regionalism” and the “New Regional Economic Order (NREO)” to contextualize Asian regionalism and its implications for North-South relations in the multilateral trading system. To substantiate my claims, the methodology of the book is intentionally eclectic. The Association of Southeast Asian Nations (ASEAN) centrality has emerged as a well-recognized operational concept in the regional architecture. Therefore, I focus on the broader implications of the legalization of the ASEAN Economic Community rather than the conventional country-centered approach. In particular, I illuminate the origin and change of the ASEAN Plus Six framework, which led to the Regional Comprehensive Economic Partnership (RCEP) as the world’s largest free trade agreement by economic scale.

In today’s multipolar world, new Asian regionalism is of global significance. I do not parochially perceive Asia’s new normative integration process as a pure intra-regional evolution. To shed light on endogenous and exogenous influences, I examine the strengths and weaknesses of EU and US initiatives with ASEAN and key Asian economies. Moreover, I evaluate the soft-law development of the Asia-Pacific Economic

Cooperation (APEC) and its nexus with ASEAN, the RCEP and the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP).

These collective analyses reinforce what I have attempted to convey. With the arrival of the Asian century, the region's regulatory influences enrich global rulemaking and require a more in-depth, on-the-ground study. I define new Asian regionalism as a new normative integration process that has evolved with the ASEAN Plus Six framework, which underpins Asia's ascending economic power. More fundamentally, I argue that new Asian regionalism has emerged amid the Third Regionalism and contributed to the NREO, which reinvigorates the role of developing countries in shaping international trade norms. The argument that I advance challenges the West-centric understanding of Asian trade and investment pacts as improper or low quality. As empirical findings demonstrate, multifaceted cultural and political factors resulted in the pragmatic incrementalism model that has crystalized legal structures of Asian integration.

This book has had a long gestation period since I first embarked on international economic law research. I am indebted to my mentors of international law and political science, including Chun-i Chen, Bruno Coppieters, Jacques deLisle and Ma Ying-jeou. They exposed me to the new world of theoretical debates and firsthand legal challenges that confront China, Taiwan and the Asia-Pacific. My experience as a junior lawyer at the WTO Appellate Body Secretariat expanded my horizon of the multilateral trade regime and negotiations. Working with and learning from Georges Abi-Saab and Werner Zdouc tremendously enhanced my practical understanding of the intersection between trade rules and public international law.

I am fortunate to develop my academic career in Singapore, a cosmopolitan city-state and hub of Asia's trade, investment and digital agreements. At Singapore Management University (SMU), I am grateful to Dean Goh Yihan of the Yong Pung How School of Law and Director Yip Man of the Centre for Commercial Law in Asia for their encouragement and support. I also thank my colleagues, Locknie Hsu, Lee Pey Woan, Liu Kung-Chung, Low Kee Yang, Tang Hang Wu and Yeo Tiong Min, for their insightful advice.

I had the opportunity to present papers that underpin core ideas of the book at various conferences and faculty workshops organized by the American Society of International Law, the Asian Society of International Law, the European Parliament, the Institute for Global

Law and Policy of Harvard Law School, Seoul National University, the Society of International Economic Law, National Taiwan University and the US-Asia Law Institute of New York University Law School. I benefited from the feedback of organizers and participants, including particularly Dukgeun Ahn, Antony Anghie, Jerome A. Cohen, Yuka Fukunaga, Jaemin Lee, Tsai-yu Lin, Chang-fa Lo, Shin-yi Peng, Sonia E. Rolland and Peter Van den Bossche. These papers have been published in journals such as the *Journal of International Economic Law*, the *Journal of World Investment & Trade* and the *Leiden Journal of International Law*. The comments from editors and reviewers enabled me to explore fundamental issues at fuller length in this book.

Throughout the writing process, I benefited from deep and rich conversations with a group of outstanding experts: William Burke-White, Julien Chaisse, Christopher Chen, Manjiao Chi, Sungjoon Cho, Matthew Erie, Ilaria Espa, Yoshifumi Fukunaga, Weixia Gu, Shintaro Hamanaka, Benjamin Hartmann, Jean Ho, Meredith Kolsky Lewis, Julian Ku, Carlos A. Kuriyama, Inu Manak, Bryan Mercurio, Fabio Morosini, Krista Nadakavukaren Schefer, Thomas Streinz, Marcus Wagner, Heng Wang, Timothy Webster, Müslüm Yilmaz and David Zaring. They provided me with insights into APEC, the CPTPP, the RCEP and the WTO, as well as trade policies of China, the European Union and the United States.

Special thanks to Joe Ng and the staff of Cambridge University Press for their guidance. I also appreciate Chai Yee Xin of the SMU Kwa Geok Choo Law Library and my research assistants, Rachel Chang, Chen Sicong, Nicholas Kuek, Terrence Lerh, Lim Wei Ming, Mei-Yi Lin, Liu Jiayi, Victoria Liu, Soh Kian Peng and Tan Yoong San, for their dedicated work. I acknowledge with gratitude the funding provided by the SMU Lee Kong Chian Fellowship, the Center of International Legal Studies of National Chengchi University and the Sumitomo Foundation of Japan. Finally, I profoundly thank my family and friends, including Kuei-Lan Chiu, Christine Y. Chang, Melisma Cox and Scott Y. Lin, for their long-standing support.

ABBREVIATIONS

AANZFTA	ASEAN-Australia-New Zealand Free Trade Agreement
ABAC	ASEAN Business Advisory Council
ABIF	ASEAN Banking Integration Framework
ABMI	Asian Bond Market Initiative
ACFTA	ASEAN-China Free Trade Agreement
ACIA	ASEAN Comprehensive Investment Agreement
ACMF	ASEAN Capital Markets Forum
ACPE	ASEAN Chartered Professional Engineer
ADMM+	ASEAN Defense Ministers' Meeting Plus
ADR	Alternative Dispute Resolution
AEC	ASEAN Economic Community
AEC Blueprint 2015	ASEAN Economic Community Blueprint 2015
AEC Blueprint 2025	ASEAN Economic Community Blueprint 2025
AEM	ASEAN Economic Ministers
AFAS	ASEAN Framework Agreement on Services
AfCFTA	African Continental Free Trade Area
AFIF	ASEAN Financial Integration Framework
AFTA	ASEAN Free Trade Area
AHKFTA	ASEAN-Hong Kong Free Trade Agreement
AIA	ASEAN Investment Area Agreement
AIIB	Asian Infrastructure Investment Bank
AIPO	ASEAN Inter-Parliamentary Organization
AMS	ASEAN Member State
AOIP	ASEAN Outlook on the Indo-Pacific
APEC	Asia-Pacific Economic Cooperation
AQRF	ASEAN Qualifications Reference Framework
ARF	ASEAN Regional Forum
ARIA	Asia Reassurance Initiative Act of 2018
ARISE	ASEAN Regional Integration Support from the EU
ASEAN	Association of Southeast Asian Nations
ASEAN MNP Agreement	ASEAN Agreement on the Movement of Natural Persons

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ASEM	Asia-Europe Meeting
ATIGA	ASEAN Trade in Goods Agreement
ATISA	ASEAN Trade in Services Agreement
AWGIPC	ASEAN Working Group on Intellectual Property Cooperation
BIT	Bilateral Investment Treaty
BRI	Belt and Road Initiative
CAFTA-DR	Dominican Republic-Central America FTA
CEPT	Common Effective Preferential Tariff Scheme
CETA	Comprehensive Economic and Trade Agreement
ChAFTA	China-Australia Free Trade Agreement
CJEU	Court of Justice of the European Union
CLMV	Cambodia, Lao PDR, Myanmar and Vietnam
COVID-19	Coronavirus Disease 2019
CPTPP	Progressive Agreement for Trans-Pacific Partnership
CTC	Change in Tariff Classification
DEA	Digital Economy Agreement
DSM	Dispute Settlement Mechanism
DSU	Dispute Settlement Understanding
EAEG	East Asia Economic Group
EAFTA	East Asian Free Trade Area
EAI	Enterprise of ASEAN Initiative
EAS	East Asia Summit
ECOTECH	APEC Economic and Technical Cooperation
EDSM	ASEAN Protocol on Enhanced Dispute Settlement Mechanism
EEA	European Economic Area
EEC	European Economic Community
E3	US-ASEAN Expanded Economic Engagement
EHP	Early Harvest Program
EPPD	Economic Prosperity Partnership Dialogue
E-READI	Enhanced Regional EU-ASEAN Dialogue Instrument
EU	European Union
EUSFTA	EU-Singapore Free Trade Agreement
EVFTA	EU-Vietnam Free Trade Agreement
EVSL	Early Voluntary Sectoral Liberalization
FDI	Foreign Direct Investment
FET	Fair and Equitable Trade
FTA	Free Trade Agreements
FTAAP	Free Trade Area of the Asia Pacific
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade

xxii	LIST OF ABBREVIATIONS
GDP	Gross Domestic Product
GDPR	General Data Protection Regulation
GI	Geographical Indication
GPA	Agreement on Government Procurement
GSP	Generalized Scheme of Preferences
GVC	Global Value Chain
HS	Harmonized System
IAI	Initiative for ASEAN Integration
ICJ	International Court of Justice
ICS	Investment Court System
ICSID	International Centre for Settlement of Investment Disputes
ICSID Convention	Convention on the Settlement of Investment Disputes between States and Nationals of Other States
IGA	ASEAN Investment Guarantee Agreement
IIA	International Investment Agreement
IP	Intellectual Property
IPA	Investment Protection Agreement
ISDS	Investor-State Dispute Settlement
ISI	Integrated Sourcing Initiative
ITA	Information Technology Agreement
LCC	Low-Cost Carriers
MAAS	Multilateral Agreement on Air Services
MAFLAFS	Multilateral Agreement for the Full Liberalization of Air Freight Services
MAFLPAS	Multilateral Agreement for the Full Liberalization of Passenger Air Services
MFN	Most-Favored-Nation
MLEC	UNCITRAL Model Law on Electronic Commerce
MNP	Movement of Natural Persons
MRA	Mutual Recognition Agreement
MSME	Micro, Small, and Medium Enterprise
NAFTA	North American Free Trade Area
NIEO	New International Regional Economic Order
NLD	National League for Democracy
NREO	New Regional Economic Order
NT	National Treatment
NTB	Non-Tariff Barrier
NTM	Non-Tariff Measure
OECD	Organisation for Economic Co-operation and Development
OPTAD	Organization for Pacific Trade and Development

LIST OF ABBREVIATIONS xxiii

PCA	Partnership and Cooperation Agreements
PECC	Pacific Economic Cooperation Conference
PNTR	Permanent Normal Trade Relations
PRC	People’s Republic of China
PSU	Policy Support Unit
PTA	Preferential Trade Agreement
QAB	Qualified ASEAN Bank
QFB	Qualifying Full Bank
RCEP	Regional Comprehensive Economic Partnership
RFPE	Registered Foreign Professional Engineer
RIATS	Roadmap for Integration of the Air Travel Sector
ROC	Republic of China (Taiwan)
ROO	Rules of Origin
RVC	Regional Value Content
SDT	Special and Differential Treatment
SMBD	Senior Management and Board of Directors
SME	Small and Medium Enterprise
SOE	State-Owned Enterprise
SPS	Sanitary and Phytosanitary
TAC	Treaty of Amity and Cooperation in Southeast Asia
TBT	Technical Barriers to Trade
TFA	Trade Facilitation Agreement
TIFA	Trade and Investment Framework Arrangement
TPP	Trans-Pacific Partnership
TREATI	Trans-Regional EU-ASEAN Trade Initiative
TRIMs	Trade-Related Investment Measures
TRIPs	Agreement on Trade-Related Aspects of Intellectual Property Rights
TTIP	Transatlantic Trade and Investment Partnership
UN	United Nations
UNCITRAL	United Nations Commission on International Trade Law
UNCTAD	United Nations Conference on Trade and Development
UNECE	UN Economic Commission for Europe
USMCA	United States-Mexico-Canada Agreement
USTR	United States Trade Representative
VCLT	Vienna Convention on the Law of Treaties
WTO	World Trade Organization