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.

PASHA L. HSIEH is an Associate Professor of Law and the Associate Dean (Faculty Matters & Research) at the Singapore Management University Yong Pung How School of Law. He served as the Co-Chair of the Asia-Pacific Interest Group of the American Society of International Law and is an Executive Council Member of the Society of International Economic Law.
Processes of economic regionalisation and globalisation have intensified over the last decades, accompanied by increases in the regulation of international trade and economics at the levels of international, regional and national laws. At the same time, significant challenges have arisen with respect to economic liberalization, rule-based systems of trade and investment, and their political and social impacts. The subject matter of this series is international economic law, in this contemporary context. Its core is the regulation of international trade, investment, finance and cognate areas such as intellectual property and competition policy. The series publishes books on related regulatory areas, in particular human rights, labour, environment and culture, as well as sustainable development. These areas are horizontally interconnected and vertically linked at the international, regional and national levels. The series also includes works on governance, dealing with the structure and operation of international organisations related to the field of international economic law, and the way they interact with other subjects of international and national law. The series aims to include excellent legal doctrinal treatises, as well as cutting-edge interdisciplinary works that engage law and the social sciences and humanities.

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NEW ASIAN REGIONALISM IN INTERNATIONAL ECONOMIC LAW

PASHA L. HSIEH

Singapore Management University
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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

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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
I benefited from the feedback of organizers and participants, including
particularly Dukgeun Ahn, Antony Anghie, Jerome A. Cohen, Yuka
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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 con-
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with insights into APEC, the CPTPP, the RCEP and the WTO, as well as
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# ABBREVIATIONS

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<tr>
<th>Abbreviation</th>
<th>Full Form</th>
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<tbody>
<tr>
<td>AANZFTA</td>
<td>ASEAN-Australia-New Zealand Free Trade Agreement</td>
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<td>ABAC</td>
<td>ASEAN Business Advisory Council</td>
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<td>ABIF</td>
<td>ASEAN Banking Integration Framework</td>
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<td>ABMI</td>
<td>Asian Bond Market Initiative</td>
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<td>ACFTA</td>
<td>ASEAN-China Free Trade Agreement</td>
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<td>ACIA</td>
<td>ASEAN Comprehensive Investment Agreement</td>
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<td>ACMF</td>
<td>ASEAN Capital Markets Forum</td>
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<td>ACPE</td>
<td>ASEAN Chartered Professional Engineer</td>
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<td>ADMM+</td>
<td>ASEAN Defense Ministers’ Meeting Plus</td>
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<td>ADR</td>
<td>Alternative Dispute Resolution</td>
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<td>AEC</td>
<td>ASEAN Economic Community</td>
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<td>AEC Blueprint 2015</td>
<td>ASEAN Economic Community Blueprint 2015</td>
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<td>AEC Blueprint 2025</td>
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<td>AEM</td>
<td>ASEAN Economic Ministers</td>
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<td>AFAS</td>
<td>ASEAN Framework Agreement on Services</td>
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<td>AfCFTA</td>
<td>African Continental Free Trade Area</td>
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<td>AFIF</td>
<td>ASEAN Financial Integration Framework</td>
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<td>AFTA</td>
<td>ASEAN Free Trade Area</td>
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<td>AHKFTA</td>
<td>ASEAN-Hong Kong Free Trade Agreement</td>
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<td>AIA</td>
<td>ASEAN Investment Area Agreement</td>
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<td>AIB</td>
<td>Asian Infrastructure Investment Bank</td>
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<td>AIPO</td>
<td>ASEAN Inter-Parliamentary Organization</td>
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<td>AMS</td>
<td>ASEAN Member State</td>
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<td>AOIP</td>
<td>ASEAN Outlook on the Indo-Pacific</td>
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<td>APEC</td>
<td>Asia-Pacific Economic Cooperation</td>
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<td>AQRF</td>
<td>ASEAN Qualifications Reference Framework</td>
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<td>ARF</td>
<td>ASEAN Regional Forum</td>
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<td>ARIA</td>
<td>Asia Reassurance Initiative Act of 2018</td>
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<td>ARISE</td>
<td>ASEAN Regional Integration Support from the EU</td>
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<td>ASEAN</td>
<td>Association of Southeast Asian Nations</td>
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<td>ASEAN MNP Agreement</td>
<td>ASEAN Agreement on the Movement of Natural Persons</td>
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<td>ASEM</td>
<td>Asia-Europe Meeting</td>
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<td>ATIGA</td>
<td>ASEAN Trade in Goods Agreement</td>
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<td>ATISA</td>
<td>ASEAN Trade in Services Agreement</td>
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<td>AWGIPC</td>
<td>ASEAN Working Group on Intellectual Property Cooperation</td>
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<td>BIT</td>
<td>Bilateral Investment Treaty</td>
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<td>BRI</td>
<td>Belt and Road Initiative</td>
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<td>CAFTA-DR</td>
<td>Dominican Republic-Central America FTA</td>
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<td>CEPT</td>
<td>Common Effective Preferential Tariff Scheme</td>
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<td>CETA</td>
<td>Comprehensive Economic and Trade Agreement</td>
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<td>ChAFTA</td>
<td>China-Australia Free Trade Agreement</td>
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<td>CJEU</td>
<td>Court of Justice of the European Union</td>
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<td>CLMV</td>
<td>Cambodia, Lao PDR, Myanmar and Vietnam</td>
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<td>COVID-19</td>
<td>Coronavirus Disease 2019</td>
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<td>CPTPP</td>
<td>Progressive Agreement for Trans-Pacific Partnership</td>
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<td>CTC</td>
<td>Change in Tariff Classification</td>
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<td>Digital Economy Agreement</td>
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<td>DSM</td>
<td>Dispute Settlement Mechanism</td>
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<td>DSU</td>
<td>Dispute Settlement Understanding</td>
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<td>EAEG</td>
<td>East Asia Economic Group</td>
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<td>EAFTA</td>
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<td>EAI</td>
<td>Enterprise of ASEAN Initiative</td>
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<td>EAS</td>
<td>East Asia Summit</td>
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<td>ECOTECH</td>
<td>APEC Economic and Technical Cooperation</td>
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<td>EDSM</td>
<td>ASEAN Protocol on Enhanced Dispute Settlement Mechanism</td>
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<td>EEA</td>
<td>European Economic Area</td>
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<td>EEC</td>
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<td>E3</td>
<td>US-ASEAN Expanded Economic Engagement</td>
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<td>EHP</td>
<td>Early Harvest Program</td>
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<td>EPPD</td>
<td>Economic Prosperity Partnership Dialogue</td>
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<td>E-READI</td>
<td>Enhanced Regional EU-ASEAN Dialogue Instrument</td>
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<td>EU</td>
<td>European Union</td>
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<td>EUSFTA</td>
<td>EU-Singapore Free Trade Agreement</td>
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<td>EVFTA</td>
<td>EU-Vietnam Free Trade Agreement</td>
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<td>EVSL</td>
<td>Early Voluntary Sectoral Liberalization</td>
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<td>FDI</td>
<td>Foreign Direct Investment</td>
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<td>FET</td>
<td>Fair and Equitable Trade</td>
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<td>FTA</td>
<td>Free Trade Agreements</td>
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<td>FTAAP</td>
<td>Free Trade Area of the Asia Pacific</td>
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<td>GATS</td>
<td>General Agreement on Trade in Services</td>
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<td>GATT</td>
<td>General Agreement on Tariffs and Trade</td>
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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
MNPS   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

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
TIFAA 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